Directors' Duties and Breach of Duties in Bangladesh and the united Kingdom: Convergence and Diversity

Md. Khurshid Alam*

1. Introduction

A director committed to "adequately discharge its responsibilities and duties"[1] shows an indication of effective corporate governance. The directors need to be aware that they are personally subject to statutory duties in their capacity as directors of that company. In addition, the company as a separate legal entity is subject to statutory controls and the directors are responsible for ensuring that the company complies with such statutory controls. The modern day statutory duties that substitute the fiduciary or equitable duty are interpreted in accordance with the established case laws and time-tested legal principles which still remain pertinent. These statutory duties cannot be seen in isolation because in addition to these duties, a director will be subject to a wide range of regulation and legislation. In the United Kingdom,the regulation that specifies directors' duties and the breaches thereof includes inter alia the Insolvency Act 1986, the Company Directors' Disqualification Act 1986, and the Corporate Manslaughter and Corporate Homicide Act 2007.However, a director in Bangladesh follows only the duties as inserted in the company's constitution and the Companies Act 1994 and faces penalties as mentioned only in the Act. Having said this in the background, this article discusses the directors' duties and breaches thereof, takes on the laws of the United Kingdom and Bangladesh, makes a convergence and diversity, formulates recommendations on following the best practices and finally draws the conclusion.

2. Directors' Duties and Breach of Duties

One of the main statutory responsibilities falling on directors is the preparation of the accounts and the report of the directors. It is also the responsibility of the directors to ensure that the company maintains full and accurate accounting records. This includes the preparation of a balance sheet and a profit and loss account for each financial period of the company, and the presentation of these to shareholders and, subject to various exemptions, the filing of the accounts and report of the directors with the Registrar of Companies. Generally, other duties of directors "may

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* Professor, Department of Law, University of Dhaka

1 Michael Singleton and Peter Miller, 'A preliminary investigation into Australia's registered club industry and issues of corporate governance and government review' (Graduate College of Management Papers, Southern Cross University, 2009) 6; see also John OOkpara, 'Perspectives on Corporate Governance Challenges in a Sub-Saharan African Economy' (2010) 5(1) *Journal of Business and Policy Research* 110.

include policy setting, decision making, monitoring management's performance, or corporate control."[2] Boards that meet frequently are more likely to perform their duties diligently and effectively.[3]

In *North American Catholic Educational Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007), the Delaware Supreme court recently summarized the duties of directors as follows:

> "It is well established that the directors owe their fiduciary obligations to the corporation and its shareholders. While shareholders rely on directors acting as fiduciaries to protect their interests, creditors are afforded protection through contractual agreements, fraud and fraudulent conveyance law, implied covenants of good faith and fair dealing, bankruptcy law, general commercial law and other sources of creditor rights. Delaware courts have traditionally been reluctant to expand existing fiduciary duties. Accordingly, "the general rule is that directors do not owe creditors duties beyond the relevant contractual terms."

Directors may be liable to penalties if the company fails to carry out its statutory duties. However, they may have a defense if they had reasonable grounds to believe that a competent person had been given the duty to see that the statutory provisions were complied with.

3. Directors' Duties and Breach of Duties in the UK Law

3.1. Directors' Duties of Skill, Care and Diligence

It is common in comparative analysis of company law systems to divide those duties into duties of loyalty and duties of care. 'The duty of loyalty is, at its core, concerned with self-dealing transactions, and requires a manager to act fairly to the company when she is self-interested.'[4] These duties are 'regulatory' legal strategies insofar as they directly constrain the actions of corporate actors.[5] Although the line between these two sets of duties is not absolutely clear, they broadly correspond to the two main risks which shareholders run when management of their company is

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2 HomayaraLatifa Ahmed, Md. Jahangir Alam, SaeedAlamgirJafar, SawlatHilmiZaman, 'A Conceptual Review on Corporate Governance and its Effect on Firm's Performance: Bangladesh Perspective' AIUB Working Paper No. AIUB-BUS-ECON-2008-10, P. 16.

3 Pamela Kent and Jenny Stewart, 'Corporate governance and disclosures on the transition to international financial reporting standards' (Business Papers 10, Bond University, 2008) 10.

4 Martin Gelter, 'The Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance' (2009) 50(1)*Harvard International Law Journal* 129, 144.

5 John Armour, Henry Hansmann, Reinierand Kraakman'Agency Problems, Legal Strategies, and Enforcement' (Discussion Paper No. 644, John M. Olin Center for Law, Economics, and Business, Harvard Law School, 2009) 1, 1.

delegated to the board. The board may be active, but not in the direction of promoting the shareholders' interests; or the board may be slack or incompetent.[6]This division is appropriate for this study, because it corresponds also to the two basic common law sources of the rules on directors' duties in English law: duties of loyalty based on fiduciary principles, developed initially by courts of equity, and duties of skill and care which rest, with some particular twists, on the principles of the law of negligence. However, it should be noted that the general duties laid out in Chapter 2 of Part 10 of the Act are not divided in this way. The duty of care appears as the fourth of the seven duties. It is with this duty that we begin.

The issue in this area which has long been debated is that of the appropriate standard of care to be required of directors. Historically, the common law was based upon a very low standard of care, because it was subjectively formulated. The judicial interpretation of the directors' duty of skill and care has historically been maintained at a low level.[7] In the US, some state laws often eliminate personal liability for breaches of the duty of care.[8] Some scholars put that:

"While countries have established the legal duties of board members to exercise care and act in the interest of the company and *all* shareholders in each region – though the origin and exact nature of board members' duties vary across countries – these legal requirements often have limited influence on actual board practices."[9]

3.2. Directors' Fiduciary Duties

Duties of loyalty as strong protective measure against the misconduct of directors help the company to attract the investors by providing a trustworthy environment.[10] Fiduciary duties of the Board has been a central theme in corporate governance literature since its inception.[11]As remarked above, the duties of loyalty which the

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6 However, in Germany the law let off the directors from the duty to pursue the interest of shareholders. See Franklin Allen, Elena Carletti and Robert Marquez, 'Stakeholder Capitalism, Corporate Governance and
Firm Value' (UNC-Duke 2006 Corporate Finance Conference, Indian School of Business, 2006).

7 Alan Dignam and Michael Galanis, 'Corporate Governance and the Importanceof Macroeconomic Context' (2008) 28(2) *Oxford Journal of Legal Studies* 201, 224.

8 Paul Gompers, Joy Ishii and Andrew Metrick, 'Corporate Governance and Equity Prices' [2003] *Quarterly Journal of Economics* 107, 148-49.

9 FiannaJesover and Grant Kirkpatrick, 'The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries' (2005) 13(2) *Corporate Governance* 127,134.

10 Andrei Shleifer and Robert WVishny, 'A Survey of Corporate Governance' (1997) 52(2) *Journal of Finance* 737, 752.

11 Marco Becht, Patrick Bolton and Ailsa Röell, 'Corporate Governance and Control' (Financial Working Paper No 02, ECGI, 2005) 2.

law requires of directors were developed by the courts by analogy with the duties of trustees.[12] The notion of loyalty is a subjective judgment with objective benchmarks.[13] It is easy to see how, historically, this came about. Prior to the Joint Stock Companies Act 1844 most joint stock companies were unincorporated and depended for their validity on a deed of settlement vesting the property of the company in trustees. Often the directors were themselves the trustees and even when a distinction was drawn between the passive trustees and the managing board of directors, the latter would quite clearly be regarded as trustees in the eyes of a court of equity in so far as they dealt with the trust property.

With directors of incorporated companies the description "trustees" was less apposite, because the assets were now held by the company, a separate legal person, rather than being vested in trustees. However, it was not unnatural that the courts should extend it to them by analogy. For one thing, the duties of the directors should obviously be the same whether the company was incorporated or not; for another, courts of equity tend to apply the label "trustee" to anyone in a fiduciary position. Nevertheless, to describe directors as trustees seems today to be neither strictly correct not invariably helpful.[14] In truth, directors are agents of the company rather than trustees of it or its property. But as agents they stand in a fiduciary relationship to their principal, the company.[15]Fiduciary duties coincide with the moral impulse to engage in other-regarding behavior, that is, to act in the beneficiaries' best interest.[16]

The duties of good faith which this fiduciary relationship imposes are virtually identical with those imposed on trustees, and to this extent the description "trustee" still has validity.[17] Moreover, when it comes to remedies for breach of duty, the trust analogy can provide a strong remedial structure, directors who dispose of the company's assets in breach of duty are regarded as committing a breach of trust, and the persons (including the directors themselves) into whose hands those assets come may find that they are under a duty to restore the value of the misapplied assets to the company.

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12 Cally Jordan and Mike Lubrano, 'Corporate Governance and EmergingMarkets: Lessons from the Field' (Legal Studies Research PaperNo. 356, Melbourne Law School, 2007) 1, 28.

13 Angus Young,'Regulating Corporate Governance in China and Hong Kong: Do Chinese values andethics have a place in the age of Globalization?'(Proceedings of the Fifth Annual Conference : The Asian Studies
Association of Hong Kong, University of Hong Kong, 2010) 7.

14 Cit. Equitable Fire Insurance Co, Re [1925] Ch. 407 at 426, per Romer J.

15 For a more intriguing discussion, see SanjaiBhagat and Richard HJefferis 'The Econometrics of Corporate Governance Studies'.

16 Ruth V Aguilera et al, 'Corporate Governance and Social Responsibility: a comparative analysis of the UK and the US' (2006) 14(3) *Corporate Governance* 147,154.

17 See, Rafael La Porta et al, 'Investor protection and corporate governance' (2000) 58 *Journal of Financial Economics* 3.

Perhaps all that needs to be established, which is indisputable, is that directors individually owe fiduciary duties to their company and sometimes are regarded as acting in breach of trust when they deal improperly with the company's assets. In extreme cases, when directors are grossly negligent or violate their duty of loyalty to shareholders, shareholders can sue them for breach of fiduciary duty.[18]

Turning now to the main elements of the directors' fiduciary duties, it can be divided into six sub-groups, following the scheme of the Act. Three of these categories seem distinct. They are:

1. That the directors must remain within the scope of the powers which have been conferred upon them;
2. That directors must act in good faith to promote the success of the company;
3. That they must exercise independent judgment.

The final three categories are all examples of the rule against directors putting themselves in a position in which their personal interestis (or duties to others) conflict with their duty to the company. However, it is useful to sub-divide the "no conflict" principle in this way because the specific rule implementing the principle differ according to whether the conflict arises:

4. Out of a transaction with the company (self-dealing transactions);
5. Out of the director's personal exploitation of the company's property, information or opportunities; or
6. Out of the receipt from a third party of a benefit for exercising their directional functions in a particular way.

The breach of a confidentiality agreement would be considered a breach of fiduciary duty.[19]For the purposes of statutory enactment and analysis it is inevitable that the duties are separated out in some such way as that adopted in the 2006 Act. However, section 179 provides that, except where a duty is explicitly excluded by something in the statute, "more than one of the general duties may apply in any given case." This provision applies also to the duty of care. In practice, many situations will raise issues regarding more than one of the duties and, where this is so, the claimant can choose to pursue all or any of them.

3.3. Duty to Act within Powers

A duty upon the directors to remain within the powers which have been conferred upon them is a very obvious duty for the law to impose. Section 171 deals with two

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18 Oliver Hart, 'Corporate Governance: Some Theory and Implications' 1995, 105(May) *Economic Journal* 678, n 13.

19 Victoria Ivashina et al, 'Bank Debt and Corporate Governance' (2009) 22(1) *Review of Financial Studies* 41, 44.

manifestations of this principle: the director must "act in accordance with the company's constitution" and must "only exercise powers for the purposes for which they are conferred." We shall look at each in turn.

Acting in accordance with the constitution

As we saw in Chapter 3, in contrast to many other company law jurisdiction, the main source of the directors' powers is likely to be the company's articles, and the articles, therefore, are likely also to be a source of constraints on the directors' powers. The articles may confer unlimited powers on the directors, but they are likely in fact to set some parameters within which the powers are to be exercised, even if the limits are generous, as they typically will be. So, it is perhaps not surprising that section 171 contains the obligation "to act in accordance with the company's constitution". However, it should be noted that the term "constitution" goes beyond the articles. It includes resolutions and agreements which are required to be notified to the Registrar and annexed to the articles, notably any special resolution of the company.[20] It also embraces any resolution or decision taken in accordance with the constitution and any decision by the members of the company or a class of members which is treated as equivalent to a decision of the company. Thus the duty includes an obligation to obey decisions properly taken by the shareholders in general meeting, for example, giving instructions to the directors without formally altering the articles.

Improper Purposes

The second proposition contained in section 171 is that a director must "only exercise powers for the purposes for which they are conferred."[21] Often the improper purpose will be to feather the directors' own nests or to preserve their control of the company in their own interests, in which event it will also be a breach of the duty, considered below, to act in good faith to promote the success of the company. But it is clear that, notwithstanding that directors have acted honestly to promote the success of the company, they may nevertheless be in breach of duty if they have exercised their powers for a purpose outside those for which the powers were conferred upon them. Thus, the improper purposes test, like the requirement to act in accordance with the company's constitution, is an objective test.

Where the directors act for an improper purpose, at common law their act is voidable by the company, not void, as it is in the case where the directors purport to exercise a power they do not have. Thus, third parties are safe if they act before the

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20 Ss. 17 and 29-30

21 S. 171(b)

shareholders set aside the directors' decision; and, of course, the third party will also have the wider benefit of section 40, discussed above.

Finally, it should be noted that, although both duties stated in section 171 are, as with the other statutory duties, owed to the company, this does not necessarily mean that the shareholders cannot bring claims asserting breaches of their own rights arising out of directors' actions. Thus, a failure on the part of the directors to observe the limits on their powers contained in the company's constitution may put *the company* in breach of contract.

Other situations

Besides limitations on the directors' powers which are to be found in the company's constitution, the general law may limit what directors may do (or what companies may do, which will necessarily control the actions of the board) or the limitations may be found in the Companies Act or the common law of companies. Very often these provisions will specify the consequences of failure to abide by the relevant rules, and where this is the case, those rules will prevail and the directors' duties of loyalty have no role to play.

3.4. Duty to Promote the Success of the Company

Reformulating the common law

The duty to promote the success of the company is the modern version of the basic loyalty duty of directors. It is the core duty to which directors are subject, in the sense that it applies to every exercise of judgment which the directors undertake, whether they are pressing on the margins of their powers under the constitution or not and whether or not there is an operative conflict of interest. Together with the non-fiduciary duty to exercise care, skill and diligence, the duty to promote the success of the company expresses the law's view on how directors should discharge their functions on a day-to-day basis. Thus, it is not surprising that the proper formulation of the directors' duty of loyalty was a matter of considerable controversy,

In promoting the success of the company for the benefit of its members, the director must have regard (amongst other matters) to—

(a) the likely consequences of any decision in the long term,
(b) the interests of the company's employees,
(c) the need to foster the company's business relationships with suppliers, customers and others,
(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and
(f) the need to act fairly as between members of the company.

Interpreting the statutory formula

Defining the company's success

A number of important arise on the interpretation of the new language contained in this section. First, it is to be noted that corporate success for the benefit of the members is the word used to identify the touchstone for the exercise of the directors' discretion. Success is a more general word than, for example, "value," which it might have been thought was what the shareholders are interested in.

Failure to have regard to relevant matters

The statutory duty contains the obligation on the director to "have regard" to the list of factors set out in sub-sections 1(a) to (f). This raises a question thatwhether this requirement on the part of the directors comes in tandem with a requirement on the part of the courts to scrutinize the decisions of the directors in order to establish, on an objective basis, they have in fact taken appropriate account of the relevant factors? In common law, it is already accepted to apply the public law doctrine of *"Wednesbury*unreasonableness"[22] in the company matters, especially in the cases where the court thinks that there had been a failure by the directors in exercising their powers under the articles to take into account factors or an alternative course of action which they should have been taken into account.

3.5. Duty to Exercise Independent Judgment

At the level of principle the requirement is uncontroversial. However, there are four points relating to the practical working of this principle which need to be considered.

First, and perhaps most obviously, the principle does not prevent directors seeking and acting on advice from others. The board will frequently seek advice from outsiders (investment bankers, layers, valuers) and rely on it. Indeed, the board might well infringe its duty to take reasonable care if it proceeded to a decision without appropriate advice. However, the board will step over the mark if it treats the advice as an instruction, though in complex technical areas the advice may leave the board with little freedom of manoeuver, for example, where lawyers advise that the board's preferred course of action would be unlawful. The board must regard itself as taking responsibility for the decision reached, after taking appropriate advice.

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[22] This principle was developed in the famous case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

Secondly, just as the duty of care does not prevent a board from delegating its functions to non-board employees (provided it has in place appropriate internal controls—see above), so the duty to exercise independent judgment does not prohibit such delegation. However, it seems that section 173 was not intended to overrule the common law rule that *delegatus non potestdelegare*, i.e. that a person to whom powers are delegated (as powers are to directors under the articles) cannot further delegate the exercise of those powers, unless the instrument of delegation itself authorizes further delegation.[23] In practice, wide powers of further delegation are conferred on the directors by the articles, and it is indeed difficult to see how the board of a large company could otherwise effectively exercise its powers of management of the company. However, this rule means that the articles may effectively prevent further delegation beyond the board by simply not providing for this.

Exercise of future discretion

Thirdly, it was debated at common law whether the non-fettering rule prevented a director from contracting with a third party as to the future exercise of his or her discretion. The answer ultimately arrived at was that this was permissible in appropriate cases. The starting point at common law, despite the paucity of reported cases on the point, seems to be that directors cannot validly contract (either with one another or with third parties) as to how they shall vote at future board meetings or otherwise conduct themselves in the future. This is so even though there is no improper motive or purpose and no personal advantage reaped but the directors under the agreement.

Section 173(2) (a) now provides that the duty to exercise independent judgment is not infringed by a director acting "in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors." Section 173(2) (b) goes on to state that no breach of the independent judgment rule arises if the director acts "in a way authorized by the company's constitution." Thus, the articles may authorize restrictions on the exercise of independent judgment, which might be a useful facility in private companies.

However, section 173(2) (a) protects the directors only from the argument that they have failed to exercise independent judgment by entering into the agreement that they have failed to exercise independent judgment by entering into the agreement which restricts their future freedom of action. Can the subsequent exercise of their powers as the contract demands be said to be a breach of their core duty of loyalty, if at the time they no longer believe it to be in accordance with their core duty to act in accordance with the contract? There are a number of cases in which, where

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23 *Cartmell's* case (1874) L.R. 9 Ch.App. 691.

shareholder consent has been required for a disposal of assets or for a takeover, the courts have been reluctant to construe agreements on the part of the directors not to co-operate with rival suitors or to recommend a rival offer to the shareholders as binding the directors, if they come to the view that the later offer is preferable from the shareholders' point of view.

Nominee directors

Finally, the independent judgment principle could cause difficulties for "nominee" directors, i.e. directors not elected by the shareholders generally but appointed but a particular class of security holder or creditor to protect their interests. English law solves such problems by requiring nominee directors to ignore the interests of the nominator, though it may be doubted how far this injunction is obeyed in practice.

3.6. Transactions with the Company (Self-Dealing)

Nineteenth-century law made all contracts in which a director was interested voidable at the instance of the corporation or shareholders no matter whether it was objectively fair. Now the law is dramatically different.[24]As fiduciaries, directors must not place themselves in a position in which there is a conflict between their duties to the company and their personal interests or duties to others.[25] Good faith must not only be done but must manifestly be seen to be done, and the law will not allow a fiduciary to place him- or herself in a position in which judgment is likely to be biased. At common law, the "no conflict" rule was probably the most important of the directors' fiduciary duties. As we have seen, the core loyalty rule is overwhelmingly subjective and so difficult to enforce, whilst, given the width of the powers conferred upon directors by the articles, the requirement that they stay within their powers under the constitution tends to have only a marginally constraining impact upon directors' activities.

Section 175 is an apparently general section dealing with, as the side-note says, "the duty to avoid conflicts of interest." However, self-dealing transactions are excluded from section 175 by section 175(3): "this duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company."

The modern rule of self-dealing has become, in principle, simply a requirement of disclosure to the board; and approval by others, whether shareholders or fellow directors, is not formally required. Unlike section 317 of the 1985 Act and earlier versions of the statutory disclosure requirement, the 2006 Act deals in separate

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24 Ralph K Winter, 'State Law, Shareholder Protection, and the Theory of the Corporation' (1977) 6(2) *Journal of Legal Studies* 251, 277.

25 For further discussion, see ibid.

places with disclosure of interests in proposed transactions (section 177) and disclosure in relation to existing transactions (section 182).

Duty to declare interests in relation to proposed transactions or arrangements

The interests to be disclosed

A director who is "in any way, directly or indirectly" interested in a proposed transaction or arrangement with the company must declare to the other directors the "nature and extent" of that interest and do so before the company enters into the transaction or arrangement (section 177(1)). If the declaration, once made, becomes or proves to be inaccurate or incomplete, a further declaration must be made (section 177(3)). The term "transaction or arrangement" clearly includes a contract, which will be the paradigm example of a transaction or arrangement, but it embraces non-contractual arrangements as well. The aim of this section is to put the other directors on notice of the conflict of interest, so that they may take the necessary steps to safeguard the company's position. It should be noted that the disclosure duty applies to any transaction or arrangement with the company, whether one to be entered into by the company through its board or through a subordinate manager.

Methods of disclosure

Assuming the duty to disclose does bite, section 177(2) lays down three methods of making the disclosure. In the case of a proposed transaction, these methods are said to be non-exhaustive, whereas in the case of existing transactions, where they also apply, the list is exhaustive of the permitted methods of disclosure.[26] The three statutory methods of disclosure are:

- at a meeting of the directors;
- by written notice to the directors;
- by a general notice.

The scheme of the statute seems to be that the first two methods are methods of giving notice in relation to an identified proposed or actual transaction, whereas a general notice is not given in respect of an identified transaction. The difference between the first two methods is that notice given outside a meeting must be sent to each director and the notice is deemed to be part of the proceedings of the next directors' meeting and so must be included in the minutes of that meeting.[27] A general notice is one in which the director declares that he is to be regarded as interested in any transaction or arrangement which is subsequently entered into by the company with a specified company, fir, or individual because of the director's

[26] S. 177(2) "but need not" and s. 182(2).
[27] Ss. 184 and 248.

interest in or connection with that other person.[28] As usual, the nature and extent of the interest has to be declared. Unlike a specific notice, however, a general notice must either be given at a meeting of the directors or, if given outside a meeting, the director must take reasonable steps to ensure that it is brought up and read out at the next meeting after it is given.[29] Thus, in relation to a general notice, the board must positively be given the opportunity to discuss the notice, though there is no obligation on the board actually to do so.

Duty to declare interests in relation to existing transactions or arrangements

Section 182 applies the principle of disclosure to the board to existing transactions, unless the interest has already been declared in relation to a proposed transaction.[30] This section catches situations such as the interests of a newly appointed director in the company's existing transactions or interests in existing contracts which an established director has just acquired, for example, because he or she has become a shareholder in one of the company's suppliers. But why should a board wish to know about the interests of its directors in concluded transactions? What practical use can it make of the information? An example might be where the company has a power under an existing contract (for example, to terminate it unilaterally) to which knowledge of the director's interest is relevant. The rules applicable to proposed transactions (discussed immediately above) apply here as well, with the following amendments and exceptions. First, the disclosure must be made "as soon as is reasonably practicable."[31] Secondly, as already noted, the statutory methods of giving notice are the only ones permitted in relation to existing transactions.[32] Thirdly, a sole director is required to have more than one director but that is not the case at the time of the disclosure. That declaration must be recorded in writing and is deemed to be part of the proceedings at the next meeting of the directors after it is given.[33] Fourthly, the obligation applies explicitly to shadow directors.[34] Finally, only a criminal sanction (a fine) is provided in respect of breaches of this statutory duty to disclose.[35]

3.7. Transactions with Directors Requiring Approval of Members

The move over the years from shareholder approval of conflicted transactions (as required by the common law) to mere board disclosure amounted to a significant

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28 S. 185.
29 S. 185(4)
30 S. 182(1).
31 S. 182(4).
32 S. 182(2).
33 S. 186.
34 S. 187(1)
35 S. 183.

dilution of the legal controls over this class of conflicts of interest. The move, which had been substantially achieved by the first quarter of the last century, was later shown to have weaknesses in those areas where the temptation to give way to conflicts of interest was high and scrutiny of the terms of the conflicted transaction by the other members of board could not be relied upon to be effective. Consequently, not only did the legislature introduce what became section 317 of the 1985 Act but it also went further and, at various times, introduced statutory provisions which restored the common law principle of shareholder approval in certain specific classes of case.

Substantial property transactions

The scope of the requirement for shareholder approval

The law governing this situation is nearly the same ass that contained in the 1985 Act, with some minor improvements recommended by the Law Commissions. Section 190 requires prior shareholder approval of a substantial property transaction between the company and its director.

A substantial property transaction is an arrangement in which the director acquires[36] from, or has acquired from him or her by, the company a substantial non-cash asset[37] of a value which exceeds £100,000 or 10 per cent of the company's net assets (section 191). The approval must be given either before the director enters into the transaction or the transaction must be conditional upon the approval being given, i.e. everything can be agreed between the parties but the transaction must not become binding on the company until the shareholders give their consent.

Remedies

Section 195 provides an extensive suite of civil remedies for breach of section 190, which at one stage looked likely to provide a template for the remedies to be made available for breach of the general duties. The transaction or arrangement is voidable at the instance of the company unless restitution of the subject-matter of the transaction is no longer possible, third party rights have intervened, an indemnity has been paid (section 195(2)) or the arrangement has been affirmed within a reasonable time by a general meeting (section 196). It should be noted that a third party is one who "is not a party to the arrangement or transaction" entered into in contravention of section 190 (section 195(2) (c)). So a connected person who is a party to the transaction will not count as a "third party" even if that person did not know of the connection with the director.

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36 Defined in s. 1163.

37 Also defined in s. 1163

Directors' service contracts and gratuitous payment to directors

A director contracting with his or her company in relation to the remuneration to be received constitutes a paradigm example of a conflict of interest, which is likely to exist in a very strong form. However, Chapter 4 of Part 10 does not in general require shareholder approval of directors' remuneration. It does so only in two specific areas. Approval is required for directors' service contracts of more than two years' duration (section 188) and of gratuitous payments for loss of office (sections 215ff).

3.8. Conflicts of Interest and the Use of Corporate Property, Information and Opportunity

The scope and functioning of section 175

Section 175(1) states that "a director must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company."[38] Section 175 (7) makes it clear that a conflict of interests includes a conflict of duties. Self-dealing transactions are covered by section 177 discussed above, rather than by section 175. However, it should be noted that s. 175(3) has the effect of excluding self-dealing transactions even if section 177 does not apply its normal rule or disclosure to the board of the conflicted transaction in question, for example, decisions on directors' remuneration. Having excluded self-dealing transactions, section 175 applies, as is expressly stated in section 175 (2), "in particular to the exploitation of any property, information or opportunity" of the company. However, it is important to note that section 175 imposes a general obligation to avoid conflicts of interest. Any conflict situation, not excluded by section 175(3), will fall within its scope, whether or not it involves the exploitation of property, information or opportunity of the company.

Competing and multiple directorships

Section 175 is based on the existence of a conflict of duty and interest (or a conflict of duties). In the area of corporate opportunity, this conflict arises because of the conflict between the interest of the director in personal exploitation of the opportunity and his or her duty to offer the opportunity to the company. The duty to offer the opportunity to the company arises because it has been characterized as a corporate one: that is why the identification of the criteria for making the opportunity a corporate one is so central to this body of law. However, one can ask, what is the nature of this duty? It is generally accepted that if the director does not wish to exploit the opportunity personally, no breach of section 175 arises because

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[38] Subject to the exception—"not reasonably regarded as likely" to give rise to a conflict—in section 175(4)(a).

there is then no personal interest conflicting with his duty to the company. In other words, a director who does nothing escapes liability under section 175.

Competing and multiple directorship

It is common for directors to hold directorships in more than one company, certainly where the companies are part of a group but also where they are independent of one another. In such cases an issue arises in relation to the compatibility of this practice with the no-conflict rule set out in section 175. There are two situations which need to be looked at: the first is where directorships are held in companies which are in business competition with one another or indeed where the director in any other way enters into competition with the company; and, secondly and more commonly, where the companies are not competitors but where nevertheless their interests may conflict from time to them.

3.9. Duty Not to Accept Benefits from Third Parties

Section 176 provides that a director "must not accept a benefit from a third party conferred by reason of (a) his being a director, or (b) his doing (or not doing) anything as a director." A "third party" means a person other than the company, an associated body corporate or a person acting on behalf of such companies. The connection of this rule with the no-conflict principle is underlined by the standard provision in this area that the duty is not infringed if the benefit "cannot reasonably be regarded as likely to give rise to a conflict of interest" (section 176(3)). This being so, it may be wondered what the purpose of section 176 is, for could not the situations it deals with be handled under the general no-conflict section (s. 175)? The answer, and it is an important one, is that there is no provision in section 176 for authorization to be given by uninvolved directors for the receipt of third-party benefits. The risk of such benefits distorting the proper performance of a director's duties is so high that it is rightly thought to be proper to require authorization from the shareholders in general meeting (even though that turns the rule into a near-ban on the receipt of third-party benefits). The fact that section 175 applies to a situation does not prevent section 176 being relied upon as well, i.e. the sections are cumulative rather than mutually exclusive in their operation.[39] Although the point is not expressly dealt with in section 176, the availability at common law of shareholder authorization is preserved by section 180(4)(a).

The common law termed such payments "bribes" though that seems a misnomer. It is enough at common law that there has been the payment of money or the conferment of another benefit upon an agent whom the payer knows is acting as an

[39] "except as otherwise provided, more than one of the general duties may apply": section 179

agent for a principal in circumstances where the payment has not been disclosed to the principal.

3.10. Remedies for Breach of Duty

Section 178 simply provides that "the consequences of a breach (or threatened breach) of section 171 to 177 are the same as would apply if the corresponding common law rule or equitable duty applied"; and that the duties contained in the sections (other than s. 174) are "enforceable in the same way as any other fiduciary duty owed to a company by its directors." It should be noted that section 178 applies only to the general duties laid out in sections 171 to 177, not to the provisions to be found in Chapter 3 of Part 10 dealing with disclosure of interests in existing transactions (for which the statute provides only criminal sanctions); nor to the provisions contained in Chapter 4 of Part 10, requiring shareholder approval for certain transactions with directors, for which a self-contained statutory civil code of remedies is provided.

The main remedies available are:

(a) injunction or declaration;
(b) damages or compensation;
(c) restoration of the company's property;
(d) rescission of the contract;
(e) account of profits; and
(f) summary dismissal.

(a) Injunction

These are primarily employed where the breach is threatened but has not yet occurred. If action can be taken in time, this is obviously the most satisfactory course. However, if the remedy is to be used effectively by an individual shareholder, suing derivatively, he or she will need to be well-informed about the proposals of the board, which in all but the smallest companies will often not be the case. An injunction may also be appropriate where the breach has already occurred but is likely to continue or if some of its consequences can thereby be avoided.

(b) Damages or compensation

Damages are the appropriate remedy for breach of a common law duty of care; compensation is the equivalent equitable remedy granted against a trustee or other fiduciary to compel restitution for the loss suffered by the breach of fiduciary duty. In practice, the distinction between the two has become blurred, and probably no useful purpose is served by seeking to keep them distinct. All the directors who

participate in the breach are jointly and severally liable with the usual rights of contribution *inter se*.

(c) Restoration of property

Although the directors are not trustees of the company's property, it has been noted that the courts sometimes treat directors as if they were such trustees. In particular, where a director disposes of the company's property in breach of fiduciary duty and in consequence the company's property comes into his or her own hands, the director will be treated as a constructive trustee of the property for the company. This means that it can be recovered *in rem* from the director, so far as traceable, either in law or in equity; and that the company's claim will have priority over those of the director's creditors.

(d) Avoidance of contracts

An agreement with the company that breaks the rules relating to contracts in which directors are interested may be avoided, provided that the company has done nothing to indicate an intention to ratify the agreement after finding out about the breach of duty, that *restitutio in integrum* is possible and that the rights of bona fide third parties have not supervened. Indeed, it may be doubted how strong a bar *restitutio in integrum* really is, in the wide powers the courts has to order financial adjustments when directing rescission. Equally, a contract entered into by the company in breach of the directors' duties to exercise their powers for a proper purpose is in principle avoidable by the company, but again subject to the rights of good faith third parties. Where, however, the directors have simply acted outside their powers, the contract will be void, not voidable.

(e) Accounting for profits

This liability may arise either out of a contract made between a director and the company or as a result of some contract or arrangement between the director and a third person. In the former case, accounting is a remedy additional to avoidance of the contrast and is normally available whether or not there is rescission. However, if a director has sold his or her own property to the company, the right to an account of profits will be lost if the company elects not to rescind or is too late to do so. When the profit arises out of a contract between the director and a third party there will be no question of rescinding that contract at the instance of the company, since the company is not a party to it. Here an account of profit will be the sole remedy.

(g) Summary dismissal

The right which an employer has at common law to dismiss an employee who has been guilty of serious misconduct has no application to the director as such.

However, it could be an effective sanction against executive directors and other officers of the company, since it may involve loss of livelihood rather than simply of position and directors' fees. However, it tends to be used only in the clearest cases. Generally, the company prefers the directors to "go quietly," which means that his or her entitlements on departure are calculated as if the contract were unimpeachable, even if there is scope for arguing that the company has the unilateral right to remove the director for breach of contract.

3.11. Specific Shareholder Approval of Breach of Duty

It is a normal principle of the law relating to fiduciaries that those to whom the duties are owed may release those who owe the duties from their legal obligations. Thus, the shareholders, acting as the company, ought in principle to be able to release the directors from their duties. In principle, such approval might be given in relation to a specific breach of duty or generally i.e. where no specific breach of duty is in contemplation or has yet occurred. In the former case the release might be prospective or retrospective. In relation to general releases the proposed release is inevitably prospective, and the obvious mechanism to use to provide such *ex ante* release form a category of duties is an appropriate provision in the articles of association.

Entitlement to vote

There were two much-debated questions about ratification and authorization at common law, only one of which the statute answers, and then only in relation to ratification. However, since the two questions are at least functionally interlinked, it may be that the statute's answer to the one question will have an impact to vote on a ratification decision.

4. Directors' Duties and Breach of Duties in Bangladeshi Law

The Act of 1994 does not lay down what the duties of a director are. Formerly, compulsory regulation 71 in the First Schedule Table A to the Act of 1913 provided that 'the business of the company shall be managed by the directors' but now that the draftsman of the Act of 1994 added one number to the articles in the First Schedule but did not make the necessary amendments in numbering the regulations referred to in section 17 of the Act the provisions of regulation 72 in the First Schedule to the Act which provides that the business of the company shall be managed by the directors is no longer a compulsory provision in the articles. However, the articles of association of a company here invariably provide a similar provision in their articles of association and in that case the basic powers of

management rests with the board of directors.Directors' fiduciary duty make them responsible to work to enhance the company's performance.[40]

The directors should exercise their power and carry out their fiduciary duties with a sense of objective judgment and independence in the best interests of the company.[41] The following statement portrays the truth about directors' duties and its observance in the context of Bangladesh:

> The Companies Act, 1994 provides for many stringent rules in respect of any negligence, default, breach of duty or trust on the part of director, manager or officer of a company. But experience would appear to show that these are more honored in the breach than observance.[42]

It has been established that "clearly articulated duty of loyalty by board members to the company and to all shareholders" is a key to protect non-controlling shareholders who do not have enough safeguards against potential abuse.[43]

4.1. Statutory Provisions on Duties of Directors

The Companies Act, however, contains provisions aimed at checking reckless abandonment of duties by directors or their liabilities. Section 96 requires that board meetings be held every three months; section 97 obliges a director to hold qualification shares; section 99 prohibits a bankrupt to act as a director; section 102 provides that save as provided in this section, any provision, whether contained in the articles of a company or any contract or otherwise, for exempting any director…from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void, provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such director against any liability incurred by him in defending any proceeding against him in which judgment has been given in his favor.

Section 103 prohibits a company from making any loans to a director; section 104 prohibits a director from holding any office of profit under the company except that

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40 MdAfzalur Rashid, *Corporate Governance in Developing Countries: A Case Study of Bangladesh* (PhD Thesis, University of Wollongong, 2009) 110.

41 ShahnawazMahmood, 'Corporate Governance and Business Ethics for SMEs in Developing Countries: Challenges and Way Forward' 14.

42 Muhammad Zahirul Islam et al, 'Agency Problem and the Role of Audit Committee: Implications for
Corporate Sector in Bangladesh' (2010) 2(3) *International Journal of Economics and Finance* 177, 184.

43 Louis Bouchez, 'Principles of Corporate Governance: The OECD Perspective' (2007) 4(3) *European Company Law* 109, 112.

of a managing director, manager, or a legal or technical adviser or banker; section 105 provides that except with the consent of the directors, a director of a company, or the firm of which he is a partner or any partner of such firm or the private company of which he is a director or member, shall not enter into any contract for the sale, purchase or supply of goods and materials of the company. Section 107 imposes restrictions on the powers of public company or the subsidiary of a public company to sell or dispose of the undertaking of the company or remit any debt due by the director except with the consent of the members in general meeting. Section 108 provides that the office of a director shall be vacated in certain circumstances most of which happen if the director acts in contravention of the statutory control mentioned earlier.

Section 109 provides restrictions on the appointment of managing directors. No public company or the subsidiary of a public company shall appoint a person as a managing director if he is the managing director of more than one other company. Further, the appointment of managing director should be sanctioned in a general meeting of the company. The government may relax the restrictions in this section. Please note that the restriction on the number of managing directorships a person may hold is not applicable in the case of a private company so that if there is a group of private companies then the same person may be the managing director of all the companies.

Section 110 provides that the appointment of a managing director shall not be for a term exceeding five years. He cannot be reappointed or his term extended for a period exceeding five years on each occasion. This will be applicable in case of all companies.

Sections 111 restricts payment of compensation for loss of office except to managing directors or directors who are managers. No payment shall be made to any other director. In an case no payment shall be made to a managing or other director where the director being in whole time employment of the company resigns his office in view of the reconstruction of the company or amalgamation of the company with any other body corporate and is appointed as any officer, including managing director or managing agent of that other company, or where the director resigns his office, or where the office of the director is vacated by virtue of any provision of the Act, or where the company is being wound up due to the negligence or default of the director, or where the office of the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in, or gross mismanagement of, the conduct of the affairs of the company or any subsidiary or holding company thereof or where the director has instigated or has taken part directly or indirectly in bringing about the termination of his office. Any payment made to a director for loss of office

should not exceed the payment due for the unexpired period of his service or for three years whichever is shorter.

Section 112 provides that no director of a company shall, in connection with the transfer of the whole or any part of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property or from any other person unless particulars with respect to the payment have been disclosed to the members of the company and approved by them in general meeting.

Section 113 provides that no director shall receive any payment by way of compensation for loss of office in connection with the transfer to any person or all or any of the shares in a company, being a transfer resulting from an offer made to the general body of shareholders, or an offer made by a body corporate with a view to the company becoming a subsidiary to such body corporate, or an offer made by or on behalf of an individual with a view to obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company. A director may have payment from the transferee but he is required to take reasonable steps to secure that particulars with respect to the payment proposed to be made by the transferees etc. be sent with the notice of the offer made for the shares. If it is not done then any payment received by him shall be in trust for any person who have sold their shares as a result of the offer made.

Section 114 makes provision so that the director concerned may not take the money indirectly in contravention of sections 111-113.Section 115 requires every company to maintain a register of directors, managers and managing directors.

Section 130 provides that every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest etc. A general notice that director is a director of any specified company or member of aany specified firm and is regarded to be interested in any subsequent transaction with such firm or company will be regarded as a sufficient notice for the purpose of the section.

Section 131 prohibits a director from voting on any contract or arrangement in which he is directly or indirectly concerned or interested. His presence in such a meeting shall not be counted for the purpose of a quorum nor shall his vote be counted in the proceedings.

The above provisions in the Act relating to the activities of a director and restrictions thereon have been inserted so that a director does not act improperly in dealing with other people's money.

4.2. Contracts with the company

The standard by which a director's duties in this country is evaluated, is the same as in England and other commonwealth countries. Directors are fiduciaries and must, therefore display the utmost good faith toward the company in their dealings with it or on its behalf. They must act bona fide, in what they believe to be the best interests of the company. They must exercise their powers for the particular purpose for which they were conferred and not for some extraneous purpose, even though they honestly believe that to be in the best interest of the company.

The trustee-like position of directors vitiates any contract which the board enters into on behalf of the company with one of their number. The Act of 1994, following the previous law of 1913 imposes particular restrictions on contracts between the company and the directors. Section 105 requires a director to have the consent of other directors before entering into a contract for the sale, purchase, or supply of any goods and materials with the company. Section 130 obliges a director to disclose his interest in a contract or arrangement entered into on behalf of the company at the meeting of the board in which such contract or arrangement is determined.

Section 131 prohibits voting by such interested director in such meeting. In the absence of a specific provision, a director does not lose his position if he is interested in contracts with the company. In this case the director of one company, who was managing director of another company and remunerated only by salary was held not to be disqualified on the ground that he was interested in contracts with that other company. A breach of the statutory provisions, however, automatically brings the basic equitable principle into operation and the contract is voidable by the company and the profits made by the interested director are recoverable. This case concerned breach of provisions for disclosure contained in the Articles and the consequence of a failure to observe a statutory provision can hardly be less extensive.

Section 108(e) and Regulation 78 of the First Schedule to the Act of 1994 provide that the office of a director shall be vacated if among other things, the director accepts or holds any office of profit under the company other than that of a managing director or manager or legal or technical adviser or a banker without the sanction of the company in general meeting.

4.3. Fiduciary agents

It is more than one hundred fifty years that the British judges pronounced that the trustee-like position of directors was liable to vitiate any contract which the board entered into on behalf of the company with one of their number. A corporate body

can only act by agents, and it is, of course, the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conduction. It is this principle that has been reflected in the enactment in the sun-continent. Sections 105, 130 and 131 of the Act of 1994 carry on the restrictions on the powers of directors while entering into contracts or arrangements which concern the company. A director, this, must disclose the nature of this interest in a contract or arrangement with the company and cannot vote when that agenda is taken up.

It appears from the language of section 131 that the word "arrangement" does not cover a general scheme of the type under which , at the time the scheme is approved by the board of directors, no right or liability accrue or are incurred by the members of the company, the directors or the company itself. The word "arrangement" contemplates transaction in which a director at once becomes interested, in that he either acquires some of a certain company only enabled members subsequently to have their dealings in future registered with the company, it was not until such registration took place that any member became interested in the scheme approved by that resolution and it was not a scheme under which any one, in his individual capacity, or any director in his capacity as such, acquired any particular interest, the scheme was not hit by the provisions of section 91B of the Act of 1913. Section 131 does not apply to a private company by virtue of sub-section (3).

4.4. Loans to directors

Section 103 prohibits loans or guarantee or securities in favor of directors. This section follows section 86D of the Act of 1913 which was introduced in the company law of our country by the amending Act of 1936. A further amendment in 1938 extended the operation of the rule to loans to private companies in which any director of the lending company was a member. Section 108(1)(g) provides that the office of a director shall be vacated if a director or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 103.

A private company may give or guarantee a loan is sanctioned by the board and the general meeting and does not exceed fifty per cent of the paid up value of the shares held by the director in his own name. A contravention of section 103 may, in addition to the vacation of the office of the director, entail a fine of five thousand taka or a simple imprisonment for six months in lieu of fine for every person who is a party to such a contravention. Regulation 78 in the First Schedule to the Act also provides that the office of a director shall be vacated if the director accepts a loan from the company.

5. Convergences and Divergences

Act within powers: The UK Act of 2006 provides in section 171 that a director of a company must act in accordance with the company's constitution, and only exercise

powers for the purposes for which they are conferred. Bangladeshi law seems to be silent on this issue.

Promoting the success of the company: Under the UK law, it is also the duty of a director of a company to act in the way he considers would be most likely to promote the success of the company for the benefit of its members as a whole. The law also set some standard which the directors should maintain in promoting the success of the company. Bangladeshi law does not have any such provision.

Duty to exercise independent judgment: A director of a company is bound to exercise independent judgment under the UK law. The Act also expressly provides that this duty is not infringed by a director actingin accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or in a way authorized by the company's constitution. There is no such express provision in Bangladeshi Act of 1994.

Duty to exercise reasonable care, skill and diligence: Directorsunder the UK company law must exercise reasonable care, skill and diligence. The law further explains it as the care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and the general knowledge, skill and experience that the director has. There is no such provision in Bangladeshi Act.

Duty to avoid conflicts of interest: The UK Act of 2006provides that a director of a company must avoid a situation in which he has, or can have, adirect or indirect interest that conflicts, or possibly may conflict, with theinterests of the company.Particularly, this applies to the exploitation of any property, information oropportunity, and it is immaterial whether the company could take advantageof the property, information or opportunity.This duty does not apply to a conflict of interest arising in relation to atransaction or arrangement with the company.This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to aconflict of interest; orif the matter has been authorized by the directors. There is no such provision in Bangladeshi Act.

Duty not to accept benefits from third parties:A director of a company must not accept a benefit from a third party conferredby reason of—his being a director, orhis doing (or not doing) anything as director.A "third party" means a person other than the company, an associated bodycorporate or a person acting on behalf of the company or an associated bodycorporate.Benefits received by a director from a

person by whom his services are provided to the company are not regarded asconferred by a third party. There is no such provision in Bangladeshi Act.

Duty to declare interest in proposed transaction or arrangement: If a director of a company is in any way, directly or indirectly, interested in aproposed transaction or arrangement with the company, he must declare thenature and extent of that interest to the other directors.The declaration may (but need not) be made—at a meeting of the directors, orby notice to the directors in accordance with—section 184 (notice in writing), orsection 185 (general notice).If a declaration of interest under this section proves to be, or becomes,inaccurate or incomplete, a further declaration must be made.Any declaration required by this section must be made before the companyenters into the transaction or arrangement.This section does not require a declaration of an interest of which the directoris not aware or where the director is not aware of the transaction orarrangement in question.For this purpose a director is treated as being aware of matters of which heought reasonably to be aware.

The Bangladeshi Companies Act of 1994 provides for similar regulation in section 130. The section provides that every director who is concerned in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on. Or, in any other case, he must disclose it at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement.

6. Recommendation

- The Bangladeshi Act should organize the sections related to the duties of directors in a single chapter.
- Bangladeshi law should provide the director's duty to act within the power defined by the company's constitution and other powers that are provided accordingly.
- It should be provided that one of the utmost duties of directors must be to promote company's success for the benefit of the company.
- It also should be provided that the directors are under a duty to exercise independent judgment while making any decision regarding company related matters.
- Bangladeshi law should provide a provision making the exercise of care, skill and diligence as the duty of a director of company.

- Bangladeshi law should also provide director's duty to avoid any conflict of interest with the company.
- The law should make new provision providing the directors' duty to have regard to the interest of employees.
- The law should provide directors' duty to exercise of powers in good faith.

7. Conclusion

Company directors are responsible for the management of their companies. They must act in a way most likely to promote the success of the business and benefit its shareholders. They also have responsibilities to the company's employees, its trading partners and the state. The UK Companies Act of 2006 codified directors' duties for the first time, as well as introduced the concept of enlightened shareholder value. The seven duties set out in Chapter 2 of Part 10 of the UK Act cover only the substantive content of the directors' duties. On the other hand, Bangladeshi Company Act of 1994 does not have any well-ordered description of directors' duties and breach of duties which causes uncertainties and ambiguities in the governance of a corporation.