



The Bar Council

Company directorships

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| Purpose: | To draw barristers' attention to their professional obligations in relation to this subject |
| Scope of application: | All barristers |
| Issued by: | The Ethics Committee |
| Last reviewed: | November 2023 |
| Status and effect: | Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4. |

Introduction

1. There are various circumstances in which you may be asked to act as a director of a company. The position in relation to your professional obligations varies according to whether the role is a:
 - Non-executive directorship of a company
 - Executive directorship of a company not providing legal services
 - Executive directorship of a company providing legal services
2. However, for each of the above, you must not do anything which could reasonably be seen by the public to undermine your honesty, integrity and independence as a BSB regulated person (CD3-CD5).

Non-executive directorships of a company

3. You are permitted to act as a non-executive director of a company, and in general, neither the law nor the Handbook draws a relevant distinction between executive and non-executive directors.

4. However, there is an exclusion from the definition of “*legal services*” for **non-executive** directors that may be relevant to how you can fulfil those duties. The BSB Handbook Definition of ‘legal services’ at sub-paragraph (f) excludes the following:

*“(f) in relation to a barrister who is a **non-executive** director of a company ... giving to the other directors ..the benefit of your learning and experience on matters of general legal principle applicable to the affairs of the company...”* (Emphasis added.)

5. This means that as a non-executive director you are permitted to share with the board the benefit of your knowledge and experience on matters of general legal principle without being in breach of the Code.

Executive directorships of a company not providing legal services

6. If no legal services are being provided, then you may act as an executive director of a company.
7. However, the exemption that allows you to provide ‘*the benefit of your learning and experience on matters of general legal principle*’ without it amounting to the provision of legal services, only applies to **non-executive** directorships. Accordingly, it would be prudent for an executive director giving such general advice to assume they would be providing legal services and do so only on formal instruction.

Executive directorships of a company providing legal services

8. On the other hand, if the company provides legal services, then as a director you will be a “manager” of that company for the purposes of the BSB Handbook, which is likely to mean that you will need to be authorised to provide legal services in that capacity; see rS6 and gS1. Additional requirements may also apply to you: for example, if you are the Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA).
9. If you have a material interest in an organisation which is proposing to refer a matter to you, or to which you are proposing to refer a matter, then you must tell the client about your interest in writing before you accept instructions or make the referral, and you must keep a record of all such referrals for review by the BSB on request (rC81 and rC82).

10. In the case of a referral to you, you must also have clear agreement with the organisation about how relevant issues, such as conflicts, will be resolved. You should also consider the other rules on associations with others (rC79, rC80 and rC83-rC85), and the guidance on associations with others (gC118-gC127), and you should ensure that you do not pay or receive a prohibited referral fee in relation to any referral to you, or by you.

11. It may also be that in acting as a director of a company providing legal services you are personally engaged in practising in a dual-capacity, i.e. both as an ‘employed’ barrister in your role of director, and as a self-employed barrister in your private practice. This will be fact specific and depend on what your role is and what you do as a director. If this is the case then you will need a dual-capacity practising certificate. In determining whether you require a dual-capacity practising certificate, you should bear in mind that you may only carry on ‘reserved legal activities’ or supply other legal services in the capacities set out in rule S16. You will need to have regard to the definitions relating to ‘employed barristers’ in Part 6 of the BSB Handbook, including the relevant scopes of practice in Part 3. It should be noted that there are a number of situations in which a barrister may be an ‘employed’ barrister for regulatory purposes, even if they are not “employed” for tax or other purposes, and will therefore need an employed or dual-capacity practising certificate. The Ethics Committee has produced a document entitled [Retainers, Fee Arrangements and Non-standard Work Arrangements](#) which may assist you in considering whether you are carrying on any activities as an ‘employed barrister’. The Ethics Committee has also produced a guidance note on the [Dual-Capacity Practice Protocol](#) you would need to have in place if you are practising in a dual-capacity.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on

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