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Fiduciary Duty Toolkit

For South African Directors

(Prepared by
RK Corporate Consulting (RKCC)
July 2025)



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Overview of Fiduciary Duty

What is Fiduciary Duty?

Fiduciary duty is a legal and ethical obligation that requires directors to act in the best interests of the company. This duty demands loyalty, good faith, and care in decision-making, placing the company's interests above personal gain or third-party benefits.

In South Africa, fiduciary duty is established through:

- **Common Law Principles:** Including the duty to avoid conflicts of interest, not to make secret profits, and to act with undivided loyalty.
- **[The Companies Act 71 of 2008:](#)** Sections 75 to 77 codify directors' duties such as acting in good faith and avoiding personal financial interests conflicting with company interests.
- **[King IV Report on Corporate Governance:](#)** Provides guiding principles for ethical leadership, transparency, and accountability.

The Director's Duty to the Company

It is important to understand that a director's fiduciary duty is owed to the company as a separate legal entity, not directly to shareholders or other stakeholders. A company has its own legal personality, which means directors must act to protect and grow the company's assets and reputation, ensuring its long-term sustainability.

Why Fiduciary Duty Matters

Failure to uphold fiduciary duties can lead to:

- Personal liability for directors, including financial penalties or disqualification.
 - Damage to the company's reputation and loss of stakeholder trust.
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- Legal consequences including voided contracts or investigations by regulatory bodies such as the Companies and Intellectual Property Commission (CIPC).

Understanding and embracing fiduciary duties helps directors to lead ethically, safeguard the company's future, and build trust among stakeholders.





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Declaration of Interest

Directors have a duty to disclose any personal financial interests that may affect their objectivity. These declarations promote transparency, uphold ethical governance, and are required by **Section 75 of the Companies Act**.

1. Declaration of Interest Form

Guidance Note for Completing the Declaration of Interest Form

As a director, it is your legal obligation to disclose any personal, financial, or business interests that may conflict with the interests of the company. This declaration helps maintain transparency and protects both you and the company from potential legal and ethical issues.

Please keep the following points in mind when completing the form:

- **Be thorough and honest.** Declare any direct or indirect interests, including those involving family members or close associates.
- **Include all relevant details.** Clearly describe the nature of the interest, the parties involved, and any financial implications.
- **Update your declaration promptly.** If your circumstances change, submit a revised declaration as soon as possible.
- **Consult your company's Conflict of Interest Policy** if you are unsure about what to disclose.
- **Remember:** Disclosure does not imply wrongdoing. It demonstrates your commitment to good governance and ethical leadership.

By completing this form accurately, you contribute to the company's integrity and compliance with South African company law.



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1.1. Declaration of Interest Form Template

I, the undersigned, hereby declare the following interests which may or may not be in conflict with my duties as a director of **[Company Name]** (the “**Company**”).

Full Name: _____

Position: _____

Date: _____

1. Direct Financial Interests

Please list any direct financial interests you, your spouse, or immediate family members hold in companies or entities which may have business relations or potential business relations with the Company.

Name of Entity	Nature of Interest (e.g., shares, contracts)	Relationship (Self, Spouse, Child, etc.)	Comments/Details

2. Indirect Financial Interests

Please disclose any indirect interests, such as holdings through trusts, close associates, or third parties that may influence your impartiality.

Description of Interest	Relationship to You	Comments/Details



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3. Other Interests

Please declare any other interests, including board memberships, advisory roles, or other connections that could present a conflict of interest.

Organisation/Entity	Role/Position	Comments/Details

Declaration

I confirm that the above information is true and complete to the best of my knowledge. I undertake to update this declaration promptly should any relevant changes occur.

Signed: _____

Date: _____



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2. Conflicts of Interest Register

Guidance for Use:

- **Date Declared:** The date when the interest was disclosed.
- **Director Name:** Full name of the director declaring the interest.
- **Nature of Interest:** Type of conflict (e.g., financial, familial, business).
- **Description of Interest:** Details of the interest, including the related party or entity.
- **Action Taken:** Record if the director recused themselves from discussions or decisions, or any other steps taken to manage the conflict.
- **Review Date:** Set a date to review the conflict for any changes or updates.

Conflict of Interest Register

Date Declared	Name of Director / Officer	Position	Nature of Interest	Entity Involved	Board Decision / Action Taken	Did Director Recuse Themselves? (Yes/No)	Notes
DD/MM/YYYY	John Doe	Director	Financial interest in supplier	ABC Supplies (Pty) Ltd	Declared at board meeting; not present during vote	Yes	Conflict recorded in minutes



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Important Notes:

- All directors must declare any actual or potential conflicts of interest as soon as they become aware of them.
- The register should be updated regularly and reviewed during board meetings.
- Proper documentation in the register helps protect the company and directors from legal and reputational risks.





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Fiduciary Duty Checklist for Directors

Disclosures and Conflicts

- ☐ Have I disclosed all personal or family-related financial interests?
- ☐ Have I updated the Conflict of Interest Register promptly?
- ☐ Have I recused myself from any board discussions or decisions where I have a conflict?

Acting in the Best Interest of the Company

- ☐ Do I prioritise the company's long-term sustainability over personal gain?
- ☐ Are all my decisions aligned with the company's strategy and goals?
- ☐ Do I avoid any action that could harm the company or its stakeholders?

Ethical Conduct and Transparency

- ☐ Do I act honestly and fairly in all board dealings?
- ☐ Are the company's reports and disclosures transparent and accurate?
- ☐ Do I foster an ethical culture within the board and the wider business?

Accountability and Governance

- ☐ Are board minutes, resolutions, and disclosures accurately recorded and maintained?
- ☐ Do I understand my legal duties and responsibilities as a director?
- ☐ Have I participated in adequate training on governance and fiduciary duties?

Risk Management and Protection

- ☐ Am I acting in good faith, with reasonable care and skill?
-



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- ☐ Do I understand the limits and protections under the Business Judgment Rule?
- ☐ Is Directors & Officers (D&O) insurance in place where applicable?

Sustainability and ESG Considerations

- ☐ Have I considered environmental, social, and governance risks in decisions?
- ☐ Does the board reflect appropriate diversity and independence?
- ☐ Are sustainable practices incorporated into the company's strategy?





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Director Reflection Sheet

Prompts to Encourage Ethical Decision-Making

Directors can use this sheet as a regular reminder to reflect on their duties and decisions.

Honest self-assessment helps maintain fiduciary responsibility and ethical governance.

- Have I fully disclosed all potential conflicts of interest?
- Are my decisions always aligned with the best interests of the company?
- Am I acting with integrity, transparency, and accountability?
- Do I have all the necessary information to make informed decisions?
- Have I sought advice or guidance where needed?
- Am I fostering a culture of ethical behaviour in the boardroom?
- How do my decisions support the company's long-term sustainability?
- Am I aware of my legal responsibilities and potential liabilities?
- Have I adequately considered Environmental, Social, and Governance (ESG) factors?
- Am I setting the right tone for leadership by example?



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Resolution for Recusal

Template for Proper Governance Procedure

This template can be used to formally document a director's recusal from discussions and decisions where they have a conflict of interest.

Board Resolution

Date: _____

Whereas [Director's Name] has disclosed a personal interest in the matter of [brief description of matter], which may give rise to a conflict of interest;

Resolved that:

1. [Director's Name] shall recuse themselves from the discussion and decision-making regarding this matter.
2. [Director's Name] shall leave the meeting room during the deliberation and voting on this issue.
3. The company secretary shall record this disclosure and recusal in the minutes of the meeting.

This resolution was passed unanimously by the board.

Signed: _____

Chairperson

Signed: _____

Company Secretary



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Conflict of Interest Policy (Sample)

For SMEs with No Formal Governance Documents

Purpose:

To ensure transparency, accountability, and compliance with fiduciary duties, this policy outlines the procedures for identifying, disclosing, and managing conflicts of interest within the company.

Scope:

Applies to all directors, officers, employees, and contractors.

Key Principles:

- All conflicts or potential conflicts of interest must be disclosed promptly.
- Directors with a conflict must recuse themselves from related discussions and decisions.
- The company maintains a Conflict of Interest Register.
- Non-disclosure may result in disciplinary action or legal consequences.

Procedures:

- Upon appointment and annually thereafter, individuals must complete a Declaration of Interest Form.
- Conflicts should be declared at the start of every board or committee meeting.
- All disclosures and recusals must be recorded in the minutes.
- The Conflict of Interest Register shall be maintained and updated by the company secretary.

Compliance:

Failure to comply with this policy may result in personal liability and affect the company's governance reputation.



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Support from RKCC

How We Guide Directors and Boards

At RK Corporate Consulting (RKCC), we specialise in strengthening governance and compliance frameworks for South African companies. Our tailored services include:

- Director induction and fiduciary duty training
- Drafting and reviewing governance policies, including Conflict of Interest policies
- Assisting with the establishment and maintenance of Conflict of Interest Registers
- Providing minute-taking and board documentation support
- Delivering governance audits and compliance calendar setups
- Helping integrate Environmental, Social, and Governance (ESG) principles aligned with King IV™
- Offering ongoing advisory support tailored to your company's size and sector

Our goal is to empower directors and boards with practical tools, expert knowledge, and ongoing support so you can lead confidently, mitigate risks, and ensure long-term success.



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Contact Us

Should you require assistance completing any part of this toolkit or wish to discuss your governance needs in more detail, **book your free 30-minute consultation today**. We'll tailor a compliance and governance strategy specific to your company's requirements.

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