

# Understanding Section 75 of the Companies Act: Disclosure of Directors' Personal Financial Interests

By **Tyrelle Toorn** (Candidate Attorney),  
and **Michelle Venter** (Senior Associate)

22 September 2025

## VALIDITY OF DECISIONS AND NON-COMPLIANCE:

A board decision, transaction or agreement, affected by a director's personal financial interest, may be valid despite such interest if:

- The interest was disclosed and the decision approved thereafter; or
- The decision was approved without disclosure but was subsequently ratified by the shareholders or validated by a Court.

Shareholder ratification, however, will not cure conduct that is otherwise unlawful under the Act, and courts will scrutinise whether shareholders acted on full and honest disclosure. Failure to comply may result in personal liability for any loss suffered by the company, in accordance with section 77(2)(a) of the Act, together with common law fiduciary principles. Courts may also grant remedies such as damages, restitution, or orders setting aside or rectifying the impugned transaction.

## DEFINING "RELATED PERSONS" AND "PERSONAL FINANCIAL INTERESTS":

The term "*related persons*" under the Act is defined broadly and includes individuals and entities with close ties to the director.<sup>3</sup> This also extends to companies or close corporations where the director or a related person also serves as a director or member.

"*Personal financial interest*"<sup>4</sup> is defined in the Act as a direct material interest of a financial, monetary or economic nature (subject to the Act's exclusions, e.g. interests held in unit trusts or collective investment schemes unless that person has direct control over the investment decisions of that fund or investment).

The recent decision in *Dimension Data Facilities (Pty) Ltd v Identity Property Co (Pty) Ltd*<sup>5</sup> clarified that "*direct*" should be interpreted functionally: if the director stands to benefit, regardless of technical ownership or layered structures, disclosure is required. Complex arrangements, such as *en commandite* partnerships, do not absolve directors of the duty of disclosure.

## INTRODUCTION

Section 75 of the Companies Act 71 of 2008<sup>1</sup> ("**the Act**") is a cornerstone of South African corporate law and governance, frequently engaged in boardroom decision-making. It reinforces and codifies directors' fiduciary duties to act in good faith and in the best interests of the company, while managing conflicts between personal and corporate interests. Despite its centrality, the section presents interpretive challenges, particularly regarding the scope of disclosure obligations and the nature of interests that trigger them.

## SCOPE AND APPLICATION:

Section 75 applies not only to formally appointed directors but also to alternate directors, prescribed officers, and members of board committees. Where a director has a personal financial interest in a matter before the board or is aware that a related person holds such an interest, they are obliged to disclose it, whether the matter is considered at a meeting or via written resolution. A director must disclose the interest before the matter is considered, may be asked to provide relevant material information, and is then required to leave the meeting and not participate in or execute documents relating to the matter, unless the board expressly permits.

For quorum purposes the director is treated as present, but the director's presence does not count towards the support required for a resolution to be adopted.<sup>2</sup> For the avoidance of doubt, the conflicted director is regarded as *present for the purpose of constituting a meeting (i.e. quorum)* but *is not regarded as present for the purpose of determining whether a resolution has sufficient support to be adopted* (i.e. they don't count toward the votes required).

## PRACTICAL IMPLICATIONS FOR BOARD COMPOSITION:

Conflicts often arise in group structures where directors serve across multiple entities. Cross-directorships between contracting parties will almost always trigger disclosure obligations.

Directors must assess not only their direct roles but also indirect affiliations, such as serving on the board of a shareholder company that has an interest in the transaction.

To mitigate governance risks, companies should avoid mirror boards across related entities. This ensures that decisions can be made by unconflicted directors and reduces the risk of challenges in the future.

Where such structures are unavoidable, shareholder pre-approval or ratification may be necessary, though this may hinder board efficiency and cast doubt on the validity of resolutions.

Best practice dictates structuring boards to ensure a majority of unconflicted directors. This allows decisions to proceed even after recusals. If such composition is not feasible, shareholder intervention becomes necessary. Maintaining a “conflicts register”, obtaining advance written disclosures under section 75(4), and recording recusals carefully in the minutes are all practical measures that strengthen governance.

## CONCLUSION

Section 75 of the Act demands vigilance, transparency, and sound judgment from directors. Where any doubt exists regarding the existence or proximity of a personal financial interest, disclosure is the safest course. Directors must remain alert to both direct and indirect interests, recognising that layered structures do not shield them from their fiduciary obligations.

In all cases, erring on the side of caution not only protects directors from potential liability, but also reinforces ethical governance and safeguards the integrity of corporate decision-making. The reputational cost of non-compliance is often as significant as the legal consequences.

Ultimately, Section 75 is not a mere procedural hurdle, but rather a reminder that corporate power is exercised in trust and disclosure. Directors who cultivate a culture of transparency protect both themselves as well as the companies they serve.

<sup>1</sup>*Companies Act 71 of 2008, Section 75(1)–(8), Republic of South Africa*

<sup>2</sup>*Arcangeli, M.K., The Prevention of Conflict of Interest as a Fiduciary Duty in South African Company Law, University of Pretoria, Master's Thesis, October 2020.*

<sup>3</sup>*Ibid*

<sup>4</sup>*Definition Section of Companies Act 71 of 2008, Section 75(1)–(8), Republic of South Africa.*

<sup>5</sup>*Dimension Data Facilities (Pty) Ltd and Others v Identity Property CO (Pty) Ltd and Others 2025 (2) SA 459 (GJ) (25 November 2024)*



**Michelle Venter**  
(Seniro Associate)



**Tyrelle Toorn**  
(Candidate Attorney)