

Appendix IV

A Brief Summary of Arguments For or Against a Statutory Statement of Directors' Duties¹

Issue	For	Against
1. Clarity, Certainty and Predictability	<ul style="list-style-type: none"> ✧ The directors' duties in their present form are widely misunderstood and unclear in a number of areas. Codification will set out clearly the standard against which actions by directors would be measured. It will lead to more predictability. ✧ Setting out the main directors' duties in statute would emphasise their seriousness. If only general principles are set out, codified duties could still be developed by the courts. 	<ul style="list-style-type: none"> ✧ Codification does not always lead to predictability because judges still have to interpret the law. ✧ A broad statement of principles may not necessarily assist directors to clearly identify the extent of their duties nor would it help directors to determine how they should behave in any given set of circumstances. If directors' duties are partially codified, a director might be confused to discover that he was subject to other duties not set out in the statutory statement. Codification is unlikely to result in a comprehensive statement of law.
2. Accessibility	<ul style="list-style-type: none"> ✧ Codifying the law would improve accessibility. The law should aim to educate and inform directors, and not merely impose liabilities on them. A director might find it more easily, at least in general terms, what his statutory duties are before he acts. Professionals can also be 	<ul style="list-style-type: none"> ✧ If directors' duties are stated in general terms, the statute may have to be interpreted by the courts. A lay person has to seek professional advice. As a result, the law may not be much more accessible than it is at present.

¹ The views set out in the table are based on various publications in the UK, e.g. the consultation paper published by the English and Scottish Law Commissions entitled "Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties" (1998), the Joint Report issued by the two Law Commissions (1999), the UK Company Law Review's Final Report "Modern Company Law for a Competitive Economy" (2001) and Parliamentary Brief (13 June 2006) by the Law Society of the UK. The views expressed do **not** represent the position of the Administration.

	benefited from codification since it will reduce the need to examine earlier cases.	
3. Flexibility	<ul style="list-style-type: none"> ✧ The duties could be expressed in broad and general language which would be capable of being applied in a very wide range of situations. It would thus be capable of being developed as more and more examples were discovered which fall within the general terms. ✧ In the event of any ambiguity in the statutory statement, the courts could have regard to the general law that the statute was intended to codify. 	<ul style="list-style-type: none"> ✧ Fiduciary duties cannot be codified without being stated in detailed terms in which case there will be a loss of flexibility. ✧ To include duties that were not yet well-settled or were developing into statutory form might restrict the ability of the law to develop further and adapt to changing circumstances.
4. Others	<ul style="list-style-type: none"> ✧ Company law is used internationally. It is the norm for the company law of the developed jurisdictions to have a statutory statement of the directors' duties. ✧ Under common law, the courts can only develop the law as and when appropriate cases come before them. A more systematic and comprehensive approach might, therefore, be beneficial. It would bring in new requirements for responsible business behaviour, for example, the need to consider the company's impact on the community and the environment. 	<ul style="list-style-type: none"> ✧ There is a risk that codification may be a lengthy exercise and differences of opinion may emerge as a result of which it is impossible to achieve a consensus, in particular in area where the law has not become settled. ✧ The new requirement for directors to take into account various new factors relating to corporate social responsibility when making decisions will make it more difficult for directors to manage the affairs of their companies. It would also likely lead to wastage in management time and unnecessary expense on the company's part.