



Governance *in brief*

GC100 issues practical advice to directors on performance of their s172 duty

Headlines

- GC100, the group of General Counsels of the FTSE 100, has issued updated guidance to help directors in performance of their duty under section 172 of the Companies Act 2006. The guidance is extensive and will require careful and thoughtful implementation at companies. There is a very helpful case study.
- The Guidance reminds directors that their duty is to promote the success of the company for the benefit of the members, and that section 172 applies to all aspects of their role not just when making specific decisions. The duty is owed to the company not direct to shareholders or other stakeholders.
- Six specific areas are recommended to help embed section 172 in decision making in the company, with the aim that it becomes a natural and automatic part of decision-making throughout the company:
 - strategy;
 - training;
 - information;
 - policies and processes;
 - stakeholder engagement; and
 - culture.
- Remember that this is guidance on section 172 of the Companies Act, which applies to directors of all UK limited companies, including subsidiaries and joint ventures. Large companies which are obliged by law to prepare a strategic report must for accounting periods beginning on or after 1 January 2019 include a Section 172(1) Statement in their Strategic Report and on their website.



Practical steps to help discharge the section 172 duty

The Guidance focusses on practical steps which will help embed consideration of the section 172 factors so that they are more likely to be a natural and automatic part of decision-making throughout the company. It is acknowledged that many business decisions are not made at board level but are delegated to all levels throughout the organisation. This means it is important to create a culture in the business where the broader implications of decisions are always considered.

Section 172 – Duty to promote the success of the company

01. A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so 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.

The Guidance also makes the point that it is not the directors’ duty to balance the interests of the company and those of other stakeholders. Instead, after weighing up all the relevant factors, directors must ask themselves which course of action they consider best leads to the success of the company, having regard to the long term. This can sometimes mean that certain stakeholders will be adversely affected, but this does not invalidate the decision made as long as adequate and appropriate consideration of all the relevant factors has taken place.

“In short, your duty under section 172 involves both judgment and process: you should aim to have suitable processes in place for your company so that in taking decisions to promote the success of the company, you have considered one way or another the long-term consequences and the wider stakeholder considerations.”

There are a number of recommendations and practical steps suggested to help directors discharge their section 172 duty effectively, including:

Strategy	<ul style="list-style-type: none"> Consider the relationship between corporate vision and goals and stakeholder interests. There should be a clear understanding of your company’s dependencies. Matters which are critical to the long term success of the business should be given sufficient time and focus by the board and management.
Training	<ul style="list-style-type: none"> Provide suitable induction training to all new directors (including subsidiary directors) and refresher courses from time to time. Make sure that management are also aware of the directors’ duties in the Companies Act as this may enhance their effectiveness in achieving the company’s goals in line with the board’s stakeholder and other duties which have been delegated to management.

Information	<ul style="list-style-type: none"> • Make sure the board is getting the information it needs to make informed judgements about the stakeholder interests and factors which are relevant for the company. • The metrics and reports the board receives should be broad enough to address the section 172 duty and not always focused on financial reports, current operational issues and market data. They should not obscure the things that really matter for the long-term success of the company. • The information available to others, below board level, should be consistent in approach and message such that it supports the achievement of the company's goals and the board's responsibilities under section 172.
Policies and processes	<ul style="list-style-type: none"> • Recognise the section 172 duty in the terms of reference of the board and each committee. • Ensure the company secretary attends all board meetings to advise directors as necessary on matters related to their duties and responsibilities under section 172. • Remuneration policies and incentives should reflect the section 172 factors where relevant, for example by including appropriate metrics and performance measures. • Stakeholder factors should be addressed in board papers where judged relevant. The impact of a decision should be proportionately, clearly and appropriately explained to the directors and the papers should include appropriate inputs to assess them. • There should be a consistent approach to minute taking, whether brief or detailed, and as to when section 172 factors are minuted. • Implement specific company policies and processes on section 172 topics relevant to your company, allocating responsibility to the appropriate management functions.
Stakeholder engagement	<ul style="list-style-type: none"> • Consider how stakeholder groups experience the company, its board and management through day to day business interactions, as well as through specific processes, structures or channels established for engagement. • Consider whether your company does what it says it does to and for stakeholders, and whether it is perceived as doing so by those stakeholders.
Culture	<ul style="list-style-type: none"> • Focus on the development of your company's culture so it is automatic that relevant stakeholder factors are built into the conduct of the company's business.

When considering each of these steps, a key point to remember is that there is no one-size fits all. Directors need to identify and re-assess over time the factors which are most important to the organisation and the activities being undertaken.

For further information:

The full GC100 Guidance is available at:

[https://uk.practicallaw.thomsonreuters.com/Link/Document/Blob/I59d0a3ddd47f11e8a5b3e3d9e23d7429.pdf?targetType=PLC-multimedia&originationContext=document&transitionType=DocumentImage&uniqueId=af1ac08-5b04-49ff-8450-fad8385e3a2e&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/Link/Document/Blob/I59d0a3ddd47f11e8a5b3e3d9e23d7429.pdf?targetType=PLC-multimedia&originationContext=document&transitionType=DocumentImage&uniqueId=af1ac08-5b04-49ff-8450-fad8385e3a2e&contextData=(sc.Default))

Deloitte view

- We welcome publication of this guidance which has been long awaited. It is useful, thought-provoking and contains far reaching recommendations.
- The emphasis on how to embed consideration of the section 172 factors in the culture and in all levels of decision-making throughout the organisation will require careful thought, effective communication, regular leadership and reinforcement.
- We strongly support the view that engagement with stakeholders must be undertaken with integrity and that what is reported must reflect the reality experienced by stakeholders. Companies failing to do this will very quickly find themselves in the spotlight.

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