



# DIRECTORS' RESPONSIBILITIES

Directors are appointed to manage and run limited companies. With that comes a range of serious responsibilities: some specific to the abilities of the individual while others are a matter of legal obligation. This guide concerns itself with the latter.



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The duties of company directors have previously evolved through statute and case law. The Companies Act 2006 embraces case law and demands that directors follow courses of action that should be in the best interests of the company and lead to the development and success of the company. Directors must not act in such a way that there is a conflict of interest between the good of the company and their own self-interests or wishes.

## WHO CAN BECOME A DIRECTOR?

All limited companies must appoint a minimum of one director, although most have at least two. Public limited companies require a minimum of two directors.

A director cannot be someone who has been barred from the role by a court, or who is an undischarged bankrupt, or who is aged under 16. That apart, a director must be someone the shareholders of a company feel is best suited to taking the reins of that company.

The choice of a director must conform to the articles of association that govern the management of a company. These set out what a director may or may not do.

## SKILL AND CARE AND EXPECTATIONS

Essentially, a director is required to demonstrate the skill to be expected of someone with their expertise and experience. They must also behave in a way that would be expected of someone who is taking good care of the business as if it were their own.

The actions of a director must be taken in good faith and in the interests of the company. That is, a director must: deal with all shareholders fairly and equally; stand above conflicts of interest and be open and honest about any conflicts of interest; and refuse any personal profits made at the cost of the company.

## COMPANIES HOUSE

Under company law, a director holds responsibility for filing certain documents with Companies House. Companies House needs to be informed whenever a new director (or company secretary) is appointed or when a director steps down. They will also need to be told if a director's personal details have altered (a change in address, for example). This must be done within 14 days.

Other documents that must be filed include the annual return, the annual report and accounts, and changes to the registered company address.

The late filing of accounts can involve penalties of up to £1,500 for private companies and up to £7,500 for public companies.

## EMPLOYMENT LAW

A director holds a duty to observe that their company complies with all aspects of employment law. If they don't, they could be liable in cases of unfair dismissal, racial, religious or sexual discrimination or working practices that treat employees unfairly.

The same duties apply to health and safety regulations. Directors must see to it that risk assessments are conducted and that health and safety policies are drawn up and implemented.

## TAXES AND ACCOUNTS

Company directors must check that Corporation Tax, PAYE, National Insurance and VAT are paid at the correct time and in the correct amounts.

A director is responsible for preparing a company's profit and loss account and a balance sheet (and supporting notes). They must also make sure that the company keeps proper accounting records and must take reasonable and proper steps to ensure that the accounts are true and fair. Additionally, a director has a duty to provide auditors/accountants with all the information and explanations they may request.

## OTHER ISSUES

### **Insider dealing**

It is a criminal offence for a director to deal in securities when in possession of unpublished price sensitive information, which is otherwise known as insider dealing.

### **Insolvency**

A director may be guilty of wrongful trading if they do not take all necessary steps to minimise losses to creditors once they know or ought to have known that a company is in a position where it is

unlikely to avoid insolvent liquidation. Should a company go into liquidation, a director must have monitored the company's affairs in a way that would have been taken by a reasonably prudent business person.

## DISQUALIFICATION

A director may be disqualified for a number of reasons connected to a failure in fulfilling their duties. Not filing tax returns or paying taxes, not submitting the appropriate returns to Companies House, not compiling and filing accounts, not maintaining the required company records and running an insolvent company can all result in a director's disqualification.

It is the responsibility of the courts to decide whether a person should be disqualified from holding the position of director, and disqualification periods can range from two to fifteen years.

Any person that is disqualified may not be a director, behave as if they were a director, exert an influence on the running of a company or play a part in the creation of a new company.

## GOOD PRACTICE

Given the strict legal obligations imposed on directors of companies, it makes sense to follow a series of good practices. Each board member should be supplied with management information on a regular basis; the information provided to the board should be recorded, along with any actions that need to be taken, and by whom, as a result; and professional advice should be sought in those situations where the issues do not fall within the knowledge or experience of the directors.

## SUMMARY

Directors are often the pivot on which a company turns. It is their vision, their ability to tell short-term tactic from long-term strategy, their understanding of the business operation and of market trends on which the success of a company can depend. If you would like us to help advise on the other, statutory duties a director must carry, please contact us.