



A Guide to... Director's Responsibilities

The position of director is much more than just a title. With it comes responsibilities and ones which should not be taken lightly. However, attention to these duties can bring a sense of achievement and allow you to reap the rewards of running a successful business.

The Company

Unincorporated businesses such as a sole trader or partnership, including Limited Liability Partnerships (LLPs) are often referred to as companies. For this purpose, however, we relate these duties to running a private Limited Company (Ltd Co) or a public limited company (plc). A Limited Company is one where the liability of the shareholders is limited to the value of the share capital (including unpaid).

Directors

Upon appointment as a director, there are numerous legal responsibilities. The Companies Act 2006 is the primary legislation governing the role, stating both the general duties and outlining the general 'common law' and principles that have evolved over time.

Common law had focused on the interests of shareholders, however, the new rules, detailed with the Companies Act 2006, expands on this by addressing the balance required between acting for the good of the company whilst considering its wider corporate and social responsibilities.

The new focus is the need to act in the interest of the company to the possible exclusion of the interests of the shareholders and indeed above the interests of the directors themselves personally. The objective of the new rules is to bring about consistency and clarity. It should be noted that these new rules continue to apply alongside the old ones.

The new Act outlines seven new statutory directors' responsibilities, four of which took effect from 1st October 2007 and the remaining three will be implemented with effect from 1st October 2008. We will take the opportunity to summarise these as follows: -

Duties with effect from 1st October 2007

To act within their powers – A director must only exercise powers conferred upon them and in accordance with the company's constitution.

To promote the success of the company – Directors must act in such a way that would most likely benefit the company for the members as a whole. However, additional factors such as long term consequences, employee interests, customer and supplier relationships, business integrity and impact on the wider community and environment should also be balanced.

To exercise independent judgement – A director has an obligation to act independently. This is not infringed by acting in accordance with an agreement entered into which restricts independence of judgement or by acting in a manner authorised by the company's constitution.

To exercise reasonable care, skill and diligence – Here there are subjective and objective standards. You must act using your own general knowledge, skill and experience (subjective), together with that which would be reasonably expected of a person in the role of director (objective)

Duties with effect from 1st October 2008

To avoid conflicts of interest – Directors must avoid situations where they directly or indirectly have an interest that conflicts with the interests of the company.

Not to accept benefits from third parties – A director must not accept benefits, monetary or otherwise, from a third party in order to take or not take an action as a director. This expands on the widely held principle that directors must not make a secret profit.

To declare interests in a proposed arrangement or transaction – This builds upon the existing requirement to disclose an interest in a potential transaction, to disclose the nature and extent of any interest, be it direct or indirect, prior to the transaction being entered into. The requirement to declare such an interest also applies where a director 'ought reasonably to be aware' of any such interest.

Enforcement / Penalties

Although common law duties have been extended and incorporated within Company Law, the Act states that they will be enforced in the same manner as common law. As such, there are no penalties within the Companies Act 2006 for failing to undertake any of these duties correctly. At present, enforcement is via an action against the director by the company itself or a liquidator where a company is in liquidation. Clearly, where the directors control the company, any action is unlikely. However, the Act has introduced the ability for an individual shareholder to take what is known as 'derivative action' against a director for any act of omission (involving negligence), default or breach of any duty or trust.

Warr & Co Chartered Accountants is member of the Institute of Chartered Accountants in England & Wales (ICAEW). Whilst the information detailed here is updated regularly to ensure it remains factually correct, it does not in any way constitute specific advice and no responsibility shall be accepted for any actions taken directly as a consequence of reading this. If you would like to discuss any of the points raised and / or engage our services in providing advice specific to your personal circumstances, please feel free to contact Tim Warr or Peter Edwards on 0161 477 6789 or email us at info@warr.co.uk.