



Duties and Responsibilities of Company Directors

Becoming a director of a limited company brings with it certain duties and responsibilities, and the risk of penalties if these duties are not complied with. There is a great deal of legislation in this area, and what follows is just a few examples of the issues which should be considered. These points apply equally to unpaid non-executive directors as they do to paid executives.

Responsibilities

- Every director has a general duty to act in good faith on behalf of the company, and not to allow his personal interests to prejudice this. A director must also exercise reasonable care and skill in carrying out his duties.
- Directors are subject to a wide range of specific duties imposed by various statutes, ranging from responsibility for preparing and filing accounts and annual returns with Companies House, to compliance with environmental, tax and trading laws.
- A director must disclose to the company any interest he has in a contract the company is proposing to enter into. There are also strict rules regarding contracts with directors themselves, such as the loan of money to a director or the sale of property by a director to the company.

Risks

- Directors can be subject to various penalties for failing to meet their responsibilities. These range from fines to, in some cases, imprisonment.
- Where a company becomes insolvent, the directors can be personally liable to make payments in a number of circumstances, such as allowing the company to continue trading when there is no reasonable prospect of it being able to meet its debts, or where the director has obtained some advantage at the expense of the company or its creditors.

- Directors found to be in breach of their obligations can be disqualified from acting as the director of any company for up to 15 years.

Minimising the Risks

- Every director should take his role seriously and carry out the function of director to the best of his ability. In particular, regular board meetings should be held, the company's financial affairs kept under constant review and proper records kept.
- Directors should make themselves aware of the rules which apply to their position and also to the company generally, including the company's memorandum and articles of association, and take care not to breach these.
- Directors and officers' insurance is becoming increasingly popular. Many companies indemnify their directors against costs arising from their activities, and the company can insure itself against having to meet these costs. Directors can also insure themselves against liabilities they may incur. Such policies are normally subject to a number of exclusions, such as the director's own dishonesty or fraud.
- Professional advice should be sought at an early stage if there are concerns as to any of these things, and particularly trading issues or possible insolvency.

This is a general advice note giving an indication of just some of the many issues of which directors should be aware. For further information contact Chris Smith or Derek McCulloch on 0131 225 1677.