

# Directors' Responsibilities

The position of director bestows a certain status upon an individual.

Whether you are appointed to the Board of the company you work for or you are involved in establishing a new business and take on the role of director you will feel a sense of achievement.

However the office of director should not be accepted lightly. It carries with it a number of duties and responsibilities. We summarise these complex provisions below.

Please come and talk to us if you would like more information. This is currently particularly important following the advent of the Companies Act 2006. The new Act will further clarify and codify what is expected of directors and will become effective during 2007 and 2008.

## Companies

You can undertake business in the UK as either:

- an unincorporated entity, ie a sole trader or a partnership or
- an incorporated body.

An incorporated business is normally referred to as a company. Although there are limited liability partnerships and unlimited companies the vast majority of companies are limited by shares. This means the liability of shareholders is limited to the amount unpaid (if any) on their shares.

A limited company can be a private or public company. A public company must include 'public' or 'plc' in its name and can offer shares to the public.

The responsibilities and penalties are more onerous if you are a director of a public company.

A company has a '**memorandum**', and '**articles**' which constitute its rules and will contain specific regulations regarding the duties and responsibilities of the directors.

## Directors

When you are appointed a director of a company you become an officer with extensive legal responsibilities. You are normally appointed by the Board and the appointment is confirmed by the shareholders.

You can usually resign as a director at any time, but can only be removed by the shareholders.

The rules of the company may vary these procedures.

There are two separate types of responsibility:

- **common law** - here decided legal cases have established that your position as director is similar to that of a trustee and an agent
- **statute** - here company law imposes a large number of duties upon you.

## Common Law Duties

### *Fiduciary duty*

As a director you should:

- act in good faith
- act in the best interests of the company
- avoid conflict between personal and company interests
- not make any personal gain from opportunities which arise by virtue of your position.

The law recognises that your position as director is similar to that of a trustee; ie the shareholders have 'entrusted' the company assets to you and you must act in their best interests.

### *Skill and care*

The courts have established that you must exercise due skill and care when acting as a director. Although this is a subjective matter you cannot accept appointment as a director and then do nothing.

### *Breach of duty*

Failure to fulfil these duties can result in an action by the company against you for damages. As many private companies are owned by their directors such actions are rare in these circumstances.

Indemnity insurance is available if you consider it necessary.

## Statutory Duties

### *Accounting*

Directors of a company are required by law to produce accounts. The law specifically covers the following matters:

- Accounting records  
Proper records must be maintained as defined by the Companies Act.
- Accounts  
You are required to prepare accounts for each year to a date which is registered at Companies House. The accounts must give a true and fair view and must comply with the form and content prescribed in the Companies Act.  
A copy of the accounts must be provided to each shareholder.
- Filing  
The accounts must be filed at Companies House within a specific period after the year end. Failure to meet this deadline will result in automatic penalties on the company.  
Large companies must file their full accounts but others can file an abbreviated version.
- Audit  
Larger companies are required to have an audit. This confirms that the accounts give a true and fair view. Many smaller companies are exempt from the audit requirement.

The above requirements are complex and professional advice will be required to ensure compliance. Please talk to us for further information or the current size criteria.

### *Administration*

Company law establishes a number of administrative requirements which you must comply with. These include:

- maintaining statutory registers of shareholders, directors etc
- keeping minute books

- holding meetings
- conducting business by passing resolutions in the correct manner.

In addition the law reinforces the fiduciary position of a director by including specific legislation relating to transactions between a company and its directors. These rules cover:

- prohibiting loans to directors
- restricting other credit to directors
- disclosing details of loans and other transactions in which a director has an interest in the accounts.

These rules are complex and in many cases extend to persons connected with a director.

The Companies Act contains a large number of penalties which can be levied against directors if they fail to comply with their statutory duties. These vary from a modest fine to imprisonment.

## Financial Difficulties

If your company should get into financial difficulties there are a number of ways in which you could face liability as a director.

### *Fraudulent trading*

This is committed when a company intentionally defrauds its creditors. However few actions are successful because dishonest intent must be proved.

### *Wrongful trading*

When a company is in insolvent liquidation the courts can require a contribution from any directors found guilty of wrongful trading. To avoid liability directors must show that from the moment insolvency became inevitable they took all possible steps to minimise the loss to the creditors.

The law relating to companies in difficulty should not be underestimated. Expert insolvency advice should be sought sooner rather than later.

## How We Can Help

You will now be aware that the position of director must not be accepted lightly.

- The law is designed to penalise those who act irresponsibly or incompetently.
- A director who acts honestly and conscientiously should have nothing to fear.

We can provide the professional advice you need to ensure you are in the latter category.

Call us to discuss these matters in more detail.