



Business Matters

Responsibility of a Director

It's a rewarding and responsible position, but the role of director cannot be taken lightly; there are a number of duties and responsibilities.

The introduction of the Companies Act 2006 brought about a number of changes; some have already been implemented, and some changes are yet to be put into action. This factsheet outlines the current position and will be updated once new legislation comes into force.

A Company

In the UK you can be in business as either an unincorporated entity (sole trader or partnership) or an incorporated body, which is usually referred to as a company. A limited company can either be public or private. A public company must include 'public' or plc in its name and the general public can buy shares that company. Private companies usually have 'Limited' or 'Ltd' in their name.

A company is a separate entity and in effect is a legal person in its own right. It is separate from those who run or own it and has 'limited liability' which gives the owners of the company (its shareholders) protection if the company fails. For example, if a company is put into liquidation, the people who own the company will only be required to pay what they have already paid or agreed to pay towards settling its debts; they are not personally liable for the debt.

Responsibilities of a Director

There are restrictions that prevent anyone becoming a director:

- Someone must not have been disqualified from acting as a company director (unless they have permission from court to act for a particular company).
- A person must not be an undischarged bankrupt (unless they have court permission to act for a particular company).

- From 1 October 2008, all companies (either public or private) must have at least one director who is a natural person i.e. an individual, and who is at least 16 years old.
- Any company that only had corporate directors on 8 November 2006 will have until 1 October 2010 to appoint a 'natural person director'.

When you are appointed a Director of a company, you have extensive legal responsibilities. The Companies Act 2006 sets out general duties. The Companies Act 2006 is an extension to existing 'common law' and highlights the connection between what constitutes the good of a company and a consideration of its wider corporate social responsibilities.

The legislation requires Directors to act in the interest of their company and not in the interests of other parties (including shareholders). The new Companies Act makes the law more consistent and accessible. Other existing duties continue to apply alongside new statutory duties.

New Responsibilities

Effective 1 October 2007:

Duty to act within their powers

A company director must act only in accordance with the company's constitution, and must only exercise powers for the purposes for which they were bestowed.

Duty to promote the success of the company

A director must act in a way to promote the success of the company and consequently its long-term increase in value. This will be to benefit all shareholders of the company as a whole. Directors must also take into consideration the long-term consequences of their decisions, the impact that decision has on the operation of the local community and environment, the interest of the company's employees and ensure they act fairly amongst shareholders of the company and maintain the

company's reputation for high standards of business conduct.

Duty to exercise independent judgement

A director has an obligation to exercise independent judgement.

Duty to exercise reasonable care, skill and diligence

The new law imposes 'subjective' and 'objective' standards. A Director must exercise reasonable care, skill and diligence by using their general knowledge, skill and experience (which is subjective), together with the care, skill and diligence which may reasonably be expected of someone carrying out the functions of a director (objective). A director with significant experience must exercise the appropriate level of diligence in line with their higher level of expertise.

New Director's Responsibilities from 1 October 2008

Duty to avoid conflicts of interest

Directors must avoid situations where they have or may have an interest (direct or indirect) with the interests of the company. This applies in particular to a transaction entered into with a third party and in relation to the exploitation of any property, information or opportunity. This makes it easier for directors to enter into transactions with third parties by allowing directors that are not subject to any conflict onto the board to authorise them (as long as certain requirements are met).

Duty not to accept benefits from third parties

A director must not accept any benefit from a third party (monetary or otherwise) which has been granted because of the fact they are a director, or as a consequence of taking, or not taking particular action.

Duty to declare interest in a proposed transaction or arrangement

There is already an existing requirement for directors to disclose an interest in a proposed transaction. This new duty, however, requires any company director who has a direct or indirect interest in a proposed transaction or arrangement with the company to declare the nature and extent of their interest to the other directors before the company enters into the transaction or arrangement.

This also applies in circumstances where directors 'ought reasonably to be aware' of any such conflicting interest. The requirement does not apply, however, where the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or where other directors are already aware (or ought reasonably to be aware) of the interest.

Responsibilities towards Companies House

Every company director has a personal responsibility to deliver statutory documents to Companies House, in particular these include;

- Accounts
- Annual returns; and
- Notice of change of directors or secretaries
- Notice of a change of registered office

Penalties

Action can be brought against a director for breach of duty by the company itself, a liquidator (when the company is in liquidation) by an individual shareholder.

How we can help

You will now appreciate that the position of director cannot be accepted lightly. This factsheet is designed to provide an outline of responsibilities only. We strongly recommend that you seek professional advice; please come and talk to us if you need more information.

Call our Business Specialists for more help

We have offices throughout Staffordshire and North Shropshire. Please call a member of staff from our local teams:

Stoke Office - 01782 848838
Leek Office – 01538 393600
Burslem Office – 01782 834775
Uttoxeter Office – 01889 563550
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We believe the information contained within this fact sheet to be correct at time of going to press, but we cannot accept any responsibility for any damage or loss occasioned to any person as a result of action or refraining from action as a result of any item herein. This information sheet provides outline information only; you should always seek specific professional advice. April 2009

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