

The Directors' Highway Code

Introduction

Being a director of a limited company is always more than merely a title to be proud of. It is a role with significant responsibilities that must be taken seriously. The many duties of directors apply equally to the managing director of a multi-national company as to the sales director of a small company and to the sole director of the company he owns.

Our Directors' Highway Code provides a simple introduction to anyone on the verge of becoming a director and will act as a useful reminder to all existing directors of the duties and responsibilities that they should already be familiar with. The Code includes recent developments in the law brought into effect by the Companies Act 2006 ("2006 Act").

Breaches of the laws highlighted in the Code may lead to personal liability, substantial financial penalties, imprisonment and disqualification from holding the position of director or being involved in the running of a company.

The Code is aimed at directors of Private Limited Companies. Similar rules apply to Public Limited Companies but such directors will also be subject to more stringent obligations. There are of course many other laws and regulations that apply to businesses, for which directors must have understanding and regard.

Please note that this booklet is intended for general guidance only and should not be relied upon without detailed legal advice on your specific circumstances, which Steeles Law will be very pleased to provide.

Our **mission** is simple.
To make the **law**
work for you.

Before you start - know the basics

- Familiarise yourself with the duties of a director before you agree to become a director. If you do not have the time and inclination to become fully involved, then do not become a director
- Take advice and seek help on your obligations but do not forget that you remain personally responsible for the exercise of your duties
- You are responsible for the running of the business. Do not “rubber stamp” decisions of your fellow directors
- Keep up to date on the relevant law
- Keep abreast of the financial and trading position of the company and ensure somebody competent properly monitors its solvency.

Before Incorporation

- Do not enter into contracts on behalf of the company before you receive the Certificate of Incorporation.

Publishing Company Details

- Ensure that the company’s full name is displayed at the registered office, on letters (including emails), cheques and on the company website
- The company’s letterhead must also show its registered office and its business address, if different, together with its company number. It must either display the names of all the directors, or none of them.

Insurance

- Insure against your liability for negligence, default, breach of contract and breach of trust whilst acting as a director. Such insurance is generally known as “Directors and Officers Liability Insurance” or simply D&O insurance. Carefully check the exceptions and ensure you understand the policy.
- Consult your insurance broker on all matters of trading risk, if you manufacture goods which can kill or maim if used improperly.



Other Directors

- “Shadow Directors” are people upon whose instructions the board of directors are accustomed to rely and act, but who are not formally appointed as directors. Most of the obligations in this Code apply equally to such shadow directors
- Likewise, individuals described by the company as “directors” but not formally appointed as such will very often be subject to the same obligations as if they were. This applies even if they do not ever attend director meetings.

General Duties

At all times act so as to promote the success of the company for the benefit of its shareholders and have regard to each of the following statutory factors in decision making:

- The long term consequences of decisions
- The interests of your employees
- The need to foster good business relationships
- The impact on the community and the environment
- The desirability of maintaining a reputation for high standards of business conduct
- The need to act fairly as between shareholders.

Confidentiality

- Do not disclose or use outside of the company, without authority, any of the company’s trade secrets or confidential information.

Constitution

- Ensure that the company has been properly constituted with Articles of Association (Constitution) and that the Constitution is up to date after the 2006 Act.
- Familiarise yourself with the main terms of the Constitution and keep it under review to cover changes of circumstance and pay particular attention to law
- Observe the limitations on your powers under the Constitution and act strictly within the terms of the Constitution at all times
- Do not confuse your role as a director with that of a shareholder, employee, lender or guarantor of the company.

Board Meetings

- Except in an emergency ensure reasonable notice of Board Meetings is given to all directors
- Hold a sufficient number of Board Meetings to ensure that the company’s affairs and important decisions are properly directed
- Ensure the Constitution permits Board Meetings by telephone in the event of an emergency
- If you have any personal interests, you must formally declare these at the board meeting. You may also be prevented from voting on that matter or counting in the quorum (depending on the Constitution)
- Ensure that accurate Board minutes are taken of each Meeting, filing them with the Statutory Registers
- At the next Board Meeting, read through, amend and approve previous minutes as true and accurate. The Chairman should sign these minutes.
- If you disagree with a minuted point ensure that your viewpoint is recorded even if it is not accepted by the majority.

Administration

- Keep the Statutory Registers up to date and available for inspection at the registered office
- Ensure that the company maintains adequate tax and accounting records
- Make sure that the company's accounts are audited by the company's duly appointed auditors if required
- Ensure that a copy of the company's annual accounts and reports for each financial year are sent to shareholders and others that are entitled to them
- Ensure strict compliance with the statutory filing requirements relating to accounts, annual returns, resolutions and changes of officers. Make careful diary notes to remind yourself
- Private company accounts must be filed within 9 months of the accounting reference date
- Consider registering a service address for each director.

Personal Conflict

- Do not compete with the company
- Ensure you disclose any conflicts or potential conflicts and obtain the necessary board or shareholder consent to authorise a conflict before acting (the process will vary according to the company's constitution and when it was formed)
- Do not borrow from the company without following the strict statutory regime and obtaining shareholder approval
- Do not accept benefits from third parties arising from your role as a director or agreeing to do or omit to do anything as a director
- Be aware of the tax consequences of borrowing money from the company
- If you are employed by the company, complete a service contract with the company in writing and if it is a contract that is, for a fixed period of more than two years ensure it has been approved by the shareholders
- Take advice before selling or buying any assets to or from the company
- Always take advice about your personal affairs independently from the company's advisors
- Do not bill the company for services or products received by you personally

In the business world,
the rear view mirror is **always**
clearer than the windshield.

Warren Buffett



Shares

- Do not advertise an offer of securities (including shares) without complying strictly with the 2006 Act and the Financial Services and Markets Act 2000
- Only issue and allot shares in accordance with the Constitution
- Do not allot shares at a discount – although it may be acceptable to issue part-paid shares
- Always keep your share certificates in a safe and accessible place
- Make sure a share certificate is issued as soon as possible after allotment/transfer.

Reduction or Distribution of Capital

- Do not sell the company's assets at an under-value with or without the shareholders' consent. Accurately record your reason for so doing
- Only distribute the company's capital in the best interests of the company and in accordance with the legal process
- If the company is purchasing its own shares comply with the company's Constitution and the statutory procedure
- Only declare dividends where there are sufficient "distributable profits".

Creditors

- Never increase the company's liabilities nor transfer the company's assets to the detriment of its creditors
- Take independent advice and think very carefully before personally guaranteeing the company's liabilities
- Limit the extent of any guarantee given
- Keep a copy of such guarantee and regularly review it with the bank.

Sale

- On the sale of the company only give warranties and indemnities which you know to be correct.

Insolvency

- Be vigilant to ensure that the company does not pass the financial “point of no return”, i.e. reaches a stage where there is no reasonable prospect of avoiding an insolvent liquidation
- If “the point of no return” is reached, consult Steeles Law corporate recovery immediately. Early action can help prevent personal liability
- Do not pay one creditor in preference to other creditors in the event of a prospective insolvency
- Exercise your directors' powers primarily to protect the interests of the creditors and employees
- In the event of an administration, liquidation or receivership of the company, co-operate with the administrator, liquidator or receiver and ensure you understand your obligations
- Ensure that all accounting records of the company are retained for a minimum of 7 years.

Tax

- Ensure that the company does not suffer penalties and fines through late payment of taxes.

Money Laundering and Proceeds of Crime

- Beware of the risk of inadvertently becoming involved in money laundering
- Familiarise yourself with current money laundering legislation and in particular the dangers of dealing in cash payments.

Other Duties

- Ensure that you are aware of and comply with all other legal duties applicable to your company, breach of many of which can lead to personal civil or criminal liability. Examples include: employment, Health and Safety, environmental, immigration, competition, consumer protection and many others.

Still unsure of your obligations?

We can help. Steeles Law has a dedicated team of commercial lawyers and consultants who can provide personalised, cost effective advice on any of the issues included in this guide. If you would like further information please call or email commercial@steeleslaw.co.uk.

○ **London**

Bedford House, 21a John Street, London WC1N 2BF
DX 461 (Chancery Lane, London)
Tel +44 (0) 20 7421 1720 Fax +44 (0) 20 7421 1749

○ **Norwich**


3 The Norwich Business Park,
Whiting Road, Norwich NR4 6DJ. DX 138525 (Norwich)
Tel +44 (0)1603 598 000 Fax +44 (0) 1603 598 111

○ **Diss**

2 Mount Street, Diss, Norfolk IP22 4QE. DX 42507 (Diss)
Tel +44 (0) 1379 652 141 Fax +44 (0) 1379 650 150

www.steeleslaw.co.uk



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