



Steeles Law
Solicitors



A Guide to your Responsibilities as a Director

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, to the sales director of a small company, and to the sole director of the company he owns.

This Guide 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. Breaches of the laws highlighted in the Guide could 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.

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, inclination, experience or qualifications to become 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.

The following duties are legal responsibilities and are not an exhaustive list – these are the most important responsibilities to be aware of but there are many others that you, as a director, will need to abide by.

You must promote the success of the company

You must act in a way which, at all times and when making any decision, will be most likely to achieve the success of the company for the benefit of its members as a whole. This means that you must have regard to how your decisions impact on a wide range of factors including, for example, the company's employees, the company's

business relationships and how the company's operations will impact on the community and the environment. If the company has other purposes apart from benefiting its members, like a charity, for example, you must act in a way which is most likely to benefit that purpose.

You must act within powers

You can only do things and make decisions for which you have the power to do so according to the company's constitution (which includes the articles of association and any other resolutions or agreements).

You must exercise independent judgment

As a director, you may receive advice from many different people day-to-day. However, you must still exercise your own independent judgment in deciding whether to follow that advice or not. Do not be swayed or pressured into taking a decision that you have not considered independently.

You must exercise reasonable care, skill and diligence

You are obliged to carry out your duties as a director to the standard of your particular qualifications. You should never take on a directorship if you are not suitably qualified or experienced for the type of work and responsibilities that will be expected of you.

You must avoid conflicts of interest

You must not compete with the company or exploit any information or opportunity that comes your way that would conflict with the company's interests. You must be sure to disclose any conflicts or potential conflicts to the company at all times. It would be wise to take professional advice about your personal affairs before and during your directorship.

You should not accept benefits from third parties

You must not exploit your position as a director for personal benefit and you must not agree to do, or omit to do, anything as a director in return for any benefits. Care is needed with this responsibility – attending corporate hospitality may even fall foul of this law and so you must ensure that the company's constitution expressly allows accepting benefits under a certain monetary value.

You must declare your interest in a proposed transaction or arrangement

If you have any personal interests, you must formally declare these at the board meeting in which the proposed transaction or arrangement is being discussed. You may also be prevented from voting on that matter or counting in the quorum (depending on the company's constitution).

You must uphold a duty of confidence in respect of confidential information

You must not disclose or use outside of the company, without authority, any of the company's trade secrets or confidential information.

You owe a duty in certain circumstances to consider or act in the interests of creditors

You must never increase the company's liabilities or transfer the company's assets to the detriment of its creditors, while being 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. Take independent professional advice and think very carefully before personally guaranteeing the

company's liabilities. You must act in the interests of all creditors, which means ensuring that you do not pay one creditor in preference to other creditors, especially in the event of a prospective insolvency.

Money Laundering and Proceeds of Crime

Be aware 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.

Insurance

Insure yourself 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.

Still unsure of your obligations?

We can help. Steeles Law has a dedicated team of commercial lawyers who can provide personalised, cost effective advice on any of the issues included in this guide.

If you would like further information please contact one of the Directors in our company commercial team on 01603 598000.

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