

## Roles and responsibilities of company directors and company secretaries

A company is regarded by law as an independent entity, which is owned by its members. In order for the company to operate and make decisions, the members or shareholders delegate management responsibility to a board of directors. It is the responsibility of a director to act in the best interests of the shareholders, to be fully informed about the actions of the company, to ensure that the company remains solvent and to comply with any statutory obligations.

Formal powers and rules are set out in the Memorandum and Articles of Association (a company's governing documents or constitution). Directors may take any decisions to run the company provided they do not infringe the Memorandum and Articles or the Companies Acts. The members of the company have the power to remove a director by majority vote.

### Who can be a director?

Anyone who is 16 years old or over can be a director, other than those who have been disqualified from acting as a company director or undischarged bankrupts (unless they have been given permission by the court to act for a particular company). It is possible to be a director of more than one company although care must be taken that this does not lead to a conflict of interest.

### Duties of a director

The Companies Act 2006 set out for the first time the general duties of a director. These are:

- Duty to Act within powers (s171)
- Duty to promote the success of the company (s172)
- Duty to exercise independent judgment (s173)
- Duty to exercise reasonable care, skill and diligence (s174)
- Duty to avoid conflicts of interest (s175)
- Duty not to accept benefits from third parties (s176)
- Duty to declare interest in proposed transaction or arrangement (s177)

This consolidates case law and common law duties into legislation. In addition directors are normally responsible for setting the business strategy and for monitoring and evaluating performance.

## **Responsibilities of a director**

### **Company administration**

Every director has a personal responsibility to make all the required submissions to Companies House including accounts and annual returns even where a company secretary has particular duties to make submissions. Companies House can prosecute a director for not submitting these documents on time as a criminal offence. There is a separate, civil penalty imposed on the company for the late filing of accounts.

### **Use of assets**

It is an offence for a director to make personal use of company money. A director may, however, take out a loan from the company although over a certain amount and if not repaid within a tax year it will be taxable.

Further guidance is available from HMRC – [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## **Liability**

Directors have unlimited liability for fraud or negligence. It is important for directors to demonstrate that they acted properly in the event of the company becoming insolvent. If at some time before liquidation the directors knew, or ought to have concluded, that there was no reasonable prospect of the company avoiding liquidation and steps were not taken to minimise the loss to creditors, then they will have committed a civil offence of 'wrongful trading'. Resigning will not absolve responsibility. Directors should ensure that they are always aware of the company's financial position and that they document and minute considerations and actions.

## **Legislative requirements**

Directors may be held responsible for the consequences if their decisions run against legislative requirements including employment, health and safety, environmental and anti-discrimination laws and European legislation. Since 2007 companies have also been open to prosecution for Corporate Manslaughter. Directors should also ensure that employees act within the law.

## **Useful Tips**

- Regular board meetings should take place with agendas being prepared in advance. All discussions and decisions should be recorded and circulated to directors.
- Changes in the constitution of the board must be notified to the Registrar of Companies

## Roles & responsibilities of a company secretary

Since April 2008 only public limited companies (plcs) and IPSs are required to have a company secretary. However, this does not mean that the duties of the secretary are redundant, simply that any director can carry them out. Secretaries are legally responsible, with the directors, for ensuring that the company or society operates within the statutory requirements as detailed in the Companies Acts or IPS Acts and for setting up and maintaining the official books and records.

### Who can be a company secretary?

A director of a company may take on the duties of company secretary, as long as they are not the only director of the company. A company secretary can also be a corporate body. For a small company the tasks required of a company secretary are straightforward and therefore someone who is organised and methodical would be suitable. If the organisation is a public company the directors have to appoint someone who meets the criteria for the post as laid down by the law.

### Duties of a Company Secretary

Company Secretarial duties will vary, depending upon the size and complexity of the organisation. The secretary may be expected to:

- be responsible for maintaining statutory registers including:
  - Register of Members
  - Register of Directors and Secretaries
  - Register of Directors Interests
  - Register of Debenture Holders
  - Register of Charges
  - Minute Book

- ensuring that the company files statutory information promptly (See the Companies House website for more information on what you have to send to Companies House including not only annual returns but all notifications of changes in, for example, directors, registered office or accounting periods)
- provide members and directors with notice of meetings
- provide members with proposed written resolutions and auditors with any passed resolutions
- send copies of resolutions and agreements to Companies House
- supply a copy of the accounts to every member of the company and others entitled to receive notice of general meetings
- be responsible for the keeping of copies of all members' resolutions and minutes of all proceedings and general meetings
- allow people entitled to do so to inspect company records

The secretary may be criminally liable for defaults committed by the company.

## **IPS Secretary**

The duties of a Secretary of an Industrial & Provident Society are similar with the exception that regulation is by the Financial Services Authority. An IPS must however have a secretary.

## **Further help and information**

For further advice contact Companies House or see the guidance on their website.

T 0870 33 33 636

W [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

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