

YOUR RESPONSIBILITIES AS A DIRECTOR



In today's highly-regulated business climate, it is vital to understand the responsibilities involved with taking on the role of company director.

The Companies Act 2006 sets out seven major responsibilities. These requirements are supplemented by many others, including responsibilities around accounts and records. Serving as a director entails risk and responsibility as well as reward, and imposes a high standard of behaviours. In this factsheet, we provide an overview of key areas.

DEFINING 'DIRECTOR'

A director is a person responsible for the management of a company. Anyone can be a director, subject to certain exclusions. You can be eligible if you are over 16 years old; and very broadly speaking, have neither been bankrupt nor the subject of a disqualification order.

Being a director is far more than simply a matter of holding an official title. Acting as a director is just that: it involves carrying out a role. You can be appointed as a director, and this will be the case for most directorships. You can also be considered a director if you act as one. This is known as being a 'de facto' director. You could be a de facto director if, for instance, you carry on acting as a director after your formal appointment has ended.

A LOOK AT SHADOW DIRECTORS

You could be considered a 'shadow' director if you have a commanding influence on the directors. The Companies Act defines a shadow director as 'a person in accordance with whose directions or instructions the directors of a company are accustomed to act'. Shadow directors are subject to many of the statutory responsibilities that apply to appointed directors. They can also be subject to director disqualification proceedings.

The type of factors which might indicate that someone is acting as a shadow director were highlighted in a recent tax tribunal case, concerning a company that had failed to register for VAT. HMRC

successfully held that a key employee was in fact a manager of the company. He had responsibility for company financial affairs; involvement in earlier businesses operating from the same premises; and his name was used as a contact by suppliers. The tribunal stopped short of holding the individual in question a shadow director, but did consider him a manager. This was sufficient to give liability for a significant penalty.

RESPONSIBILITIES IN COMPANY LAW

The Companies Act imposes seven general duties on directors. These duties should also be considered by shadow directors, and even if you are no longer a director, some duties will still apply. You have a duty to the company to:

1. Act within powers

You must act in accordance with the company's constitution, using your powers only for the purpose for which they are given. The constitution consists of a company's articles of association and any resolutions or agreements related to them.

2. Promote the success of the company

You must act in the way that you consider, in good faith, most likely to promote the success of the company, for the benefit of its members as a whole. 'Success', measured as long-term increase in value, must be balanced by other factors. Such factors include the likely long-term repercussions of company decisions; the interests of company employees; the fostering of business relationships with suppliers, customers and others; and the company's operating impact on community and environment. You should also remember the need to act fairly as between members of the company.

3. Exercise independent judgment

You must act independently, making your own decisions. This does not stop your acting in accordance with the company's constitution, or an agreement entered into by the company.

4. Exercise reasonable care, skill and diligence

You must exercise reasonable care, skill and diligence. This involves not just the general knowledge, skill and experience that might reasonably be expected of someone carrying on your role in the company, but also the general knowledge, skill and experience you actually have.

5. Avoid conflicts of interest

You must avoid any situation where there could be a direct or indirect interest conflicting with the company's interests: even a situation where there may possibly be a conflict of interest, or a particular bearing on the exploiting of any property or opportunity, whether or not the company has an interest in the advantage of it. Former directors have a duty to avoid the exploitation of property, information or other assets of the company of which they are aware of during their directorship.

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dormant companies. Running a limited company also involves keeping records about the company, such as a register of 'people with significant control'. Directors are responsible for submitting timely information to Companies House. Failure to do so can be a criminal offence. Required information includes the annual confirmation statement, annual accounts, and notice of change in company officers or their personal details.

TRANSACTIONS BETWEEN COMPANY AND DIRECTORS

Even where you are both a shareholder and director, it is important to remember that the company is a distinct legal entity; thus some transactions between the company, and you as director, are regulated by law. These include rules about directors' remuneration and service contracts; loans to directors; the sale of company assets to a director; and the company of assets owned by a director.

Remuneration are determined by the company's articles. Historically, this has needed the approval of shareholders. It is sufficient for the directors to determine their remuneration. In all, directors, have to be open to the possibility that a conflict of interest is needed to be resolved. There are rules about loans to directors, and from directors, to the company.

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RESPONSIBILITIES AND RECORDS

As a director, you are responsible for the company's accounts and records. Even if delegating some activities, your responsibility still lies with you. Directors have particular responsibilities for the company's accounts and records, especially the keeping of 'adequate accounting records' and preparation of accounts in accordance with the Companies Act. Having adequate accounting records essentially means a body of information sufficient to provide details of the company's transactions, assets and liabilities, so that you could disclose the company's financial position. They should also be such that you can ensure the company's accounts comply with relevant accounting requirements.

All companies have to submit accounts to Companies House, although the detail varies for micro-entities, small, medium and

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HELP

Directors acting with prudent and timely regard to their responsibilities should be able to minimise risk. We can advise on risk-reduction strategies, such as making sure the company complies with filing deadlines, and being aware of the state of the company finances on an ongoing basis. Please do contact us for further advice.

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