

SETTING UP SMALL TO MEDIUM ENTERPRISES



Part 3 - 'Directors' Duties - What obligations does a Director have?

General

Directors hold a position of trust within a company: day-to-day management of the company is delegated to the directors by its shareholders. Decisions of the directors are taken collectively by the board.

Directors' Duties

Directors have a statutory duty to promote the 'success' of their company under the Companies Act 2006 (the 'Act'). In addition directors have a number of general duties, all of which are owed to the company and not to individual shareholders. The Act codifies certain key duties, as follows:

1. Duty to act within powers (section 171)
2. Duty to promote the success of the company (section 172)
3. Duty to exercise independent judgment (section 173)
4. Duty to exercise reasonable care, skill and diligence (section 174)
5. Duty to avoid conflicts of interest (section 175)
6. Duty not to accept benefits from third parties (section 176)

Duty to declare interest in proposed transaction or arrangement (sections 177 to 185)

Directors are also subject to a number of other statutory requirements and restrictions. These include a duty to keep proper books and records and restrictions on entering into certain transactions with the company. Breach of these duties and requirements can result in a director being disqualified from acting as a director and in some cases can lead to the director incurring personal liability.

Director's Liabilities

Directors are not generally personally liable to third parties, unless they have given a personal guarantee for the liabilities of the company. However, various statutes have imposed personal liability on directors in a wide range of situations, from health and safety, to environmental and competition matters.

Directors should not act outside the scope of the powers delegated to them. A director who exceeds his powers may incur personal liability for the performance of the company's obligations.

Our expert team can offer you advice on all aspects of your obligations as a director. We also offer registered office and company secretary services to assist the director in their duty to keep proper books and records. If you have any doubts about whether or not you should take on a directorship in a given situation, it is best to contact us and we can guide you on the extent of your obligations.

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