

# The Official Roles of Company Officers

**All private limited companies have to have a company director and a company secretary. So who can become one? What do they have to do? And what happens if they don't do it.**

## The basics

You do not have to be called a director to be covered by the legal rules on directorship. Often in a small company there may be no formal agreement as to your title, but if you attend and vote at a board meeting, even if it is on a director's behalf, the law regards you as a director of the company. It helps to avoid misunderstandings if people have formally agreed titles.

As company director you are expected to do your reasonable best for that company.

You also owe your company *fiduciary* duties, so you must always act honestly and with the best interests of the company at heart.

If you have a specific professional qualification, you are expected to have higher standards when you are employed in that area than someone who is not qualified. For example, if you qualified as an accountant you would be expected to have a better understanding of the company's finances than a personnel director.

You can hold directorships of more than one company.

## Who can be a company director?

It is up to the members (owners or shareholders) of a company to appoint the people they believe will run the company well on their behalf. They can choose who they like unless they are an undischarged bankrupt; have been disqualified from acting as a company director by a court; or, in Scotland, are under 16.

## Key responsibilities

The key responsibilities of a company director are to ensure that the statutory documents are delivered to the Companies House Registrar and when required by law.

These documents include:

Accounts

Annual returns

Notice of change of directors or secretaries or their particulars such as residential address

Notice of change of registered office

If accounts or annual returns are not filed, a director could end up with a criminal record and a fine of up to £5000 for each offence. Alternatively, the Registrar could strike the company off the register and dissolve it. If this happens all the company assets become the property of the Crown.

On average more than 1000 directors are prosecuted each year for failing to deliver accounts and returns to the Registrar on time. Persistent failure can lead to a director being disqualified from taking part in the management of the company for a specified period.

You normally have 10 months from the accounting reference date to deliver your company's accounts to the registrar. If they are received late you will pay a late-filing penalty up to £1000.

Your accountant may be able to organise a lot of this information for you. No matter what your contract with him or her says, however, legal responsibility for filing the accounts rests with the officers of the company.

### **Company secretary**

The company secretary of a private limited company does not need any formal qualifications - unlike the company secretary of a public limited company (PLC) who does.

The main duties of a secretary are usually contained in his or her employment contract. They are jointly liable with the other company directors for failure to file or other misdemeanours. And, if a winding-up order is issued or an administrator is appointed, they may have to make out a statement of the company's affairs.

The company secretary also usually takes on the following, additional duties:

Register of members (shareholders)

Register of directors and secretaries

Register of directors' interests

Ensuring that statutory forms are filed promptly

Supplying a copy of the accounts to every member of the company

### **Other responsibilities**

As well as the responsibilities relating to Companies House, if you are a company director or secretary, you are bound by other regulations and restrictions:

You must not borrow from the company in excess of strict statutory limits. Directors can, and often do, lend money to their companies - this is quite legal.

You must keep up to date with the law as it affects your own business. This includes current Health & Safety at Work legislation.

As officers of the company, you are deemed to have authority to act on the company's behalf.

### **Tread carefully**

Directors have to be especially careful not to take advantage of their knowledge and position of trust.

You must have shareholders' permission before you or anyone connected with you can acquire a substantial company asset.

If you profit from their position as director - even if the company doesn't suffer at all, and even if the board has previously rejected the course of action you then take on your own account - a court can order you to pass on any profits you make to the company.

Although you can and should be insured against liability for debts or 'wrongful trading', you can still be found personally negligent when things go wrong.

You should check the exceptions on your insurance policy. Generally, however, if a court is satisfied that a director has acted honestly and reasonably, it will lift any personal liabilities.

### **Insider tips**

If you act prematurely in advance of becoming a director of a company, you may be personally liable for any deals you enter into.

The directors often guarantee a company's overdraft. If you have to wind up your company, be careful to pay off the creditors before or at least in parallel with any bank loans or overdraft facilities so that you aren't seen to favour your own interests. Take independent advice before signing any such guarantee.

Prosecution can result if you even suspect that your company is in financial difficulties and you go on trading. This is known as 'wrongful trading'. If, on the other hand, you do all you can to minimise the company's losses, the likelihood is that the courts will clear you of liability. The correct course of action should be to alert the other directors and try to bring about a recovery, if necessary by calling in outside help.

Only resign your position as a last resort when you have tried all these reasonable means to avoid liquidation.

### **Second chance**

You are not automatically barred from being a director of another company because one you used to work for went into liquidation. If, however, you set up another business under the same or a very similar name, you run the risk that you can be held personally liable for its debts, even you are a limited company. You may be barred from being a director or controlling a company if you are prosecuted and struck off.