

Information Sheet: Duties of Company Director & Secretary

Introduction

This Information Sheet relates to community enterprises that have been registered as a company, usually “not for profit” or “not for private profit” and Limited by Guarantee.

Company law sets out a range of duties and responsibilities that must be carried out by the directors of the company.

The directors may also have other responsibilities and liabilities as set out in the governing document, Memorandum and Articles of Association, agreements with fund providers, and other laws e.g. employment law, and these may change over time with different stages of development of the organisation. It may be appropriate to involve different people as directors depending on the skills and experience needed at various stages.

The director(s) are usually elected by the members to form a governing body to manage the company, and together are termed a “Board of Directors” (or management committee if there is no Board). There are a number of different categories of director and there are some people who may not be able to serve as a director. There must be at least one director and a company secretary, who is

an officer of the company and together with the director(s) is legally responsible for meeting the statutory requirements of company law.

In the case of an organisation that is both a company and a charity, the governing body has responsibilities as both company directors and charity trustees. A charitable company will be subject to additional requirements concerning who may serve on the Board, and also additional duties as imposed by charity law (detail is not included in this information sheet- contact the Charity Commission for information).

The roles of company director and charity trustee carry with them considerable responsibilities and potential liabilities. Risk can be minimised by the legal structure of the organisation and by having regular formal recorded meetings. The potential for personal liability can be minimised by ensuring that everyone in these positions becomes familiar with their legal duties and obligations, that they seek and follow professional advice on matters where there are financial or legal implications, and also fully understand and follow the Governing document and agreed company rules.

General Duties of Directors (or Trustees)

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- Setting the business strategy, monitoring and evaluation of its performance;
- Ensuring the organisation follows its Governing document;
- Ensuring good management practices are in place;
- Promotion of the organisation.

Legal Duties of Directors (or Trustees)

There are three primary legal duties:

- A duty to the company to act honestly, in good faith and in the best interest of the company as a whole;
- A duty to exercise the level of skills and care in carrying out their duties as could reasonably be expected;
- A duty to carry out the statutory obligations imposed by the Companies Acts and other legislation.
- Under the Companies Act 1985 the Board of Directors is legally required to ensure certain administrative matters are carried out:
 - Appointment of a company secretary;
 - Calling an Annual General Meeting (AGM);
 - Maintaining and auditing financial records and accounts (at least an income and expenditure account and balance sheet);
 - Preparing and filing an annual financial statement/report (this must be sent to Companies House along with audited accounts after the AGM; failure to file on time is an offence and attracts a fine); if also a Charity, a separate return will need to be sent to the Charity Commission.

- Other administrative matters are dealt with, such as keeping minutes of board meetings, reporting changes in directors.

Legal Liabilities

Legislation, including the Insolvency Act 1996 and Company Directors Disqualification Act 1986, address the issue of liability when things go wrong:

- Directors must be able to demonstrate that they acted properly in the event of the company becoming insolvent- for example, getting and following advice where necessary;
- Directors must ensure that the Company does not trade if it is insolvent (ie with a net debt);
- Directors would not usually be personally liable for company debts except where they have engaged in the civil offence of fraudulent or “wrongful trading” (where trading carried on when insolvent and the directors can be shown to have had intent to defraud, or knew/should have known the company would not recover);
- Directors have unlimited liability for fraud or negligence, and must ensure adequate insurances are in place;
- Directors are responsible for complying with other relevant legislation, such as equal opportunities, health and safety, employment law;
- If the company is also a charity, the directors as charity trustees can be held personally liable if the charity’s funds

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have been used for some purpose outside the stated objects and powers.

An individual director must also:

- Avoid a conflict of duty and personal interest, and where this is unavoidable disclose direct or indirect conflict of interest to the Board;
- Not make personal use of company's assets (this is an offence);
- Not use company assets for a loan guarantee or security.

Legal Duties of the Company Secretary

The post of company secretary is a legal position required under company law. Directors must appoint a company secretary (it is not an elected position), who ideally would be someone with a clear understanding of the organisation and time to carry out the duties.

The post carries a high level of responsibility and while they need not have special qualifications it is important that they have the necessary skills.

The company secretary, along with the director(s), can be given substantial fines for failing to make annual returns, failing to hold an AGM, and/or for failing to notify changes in registered information.

Key duties include: -

- Convene the AGM within 18 months of incorporation and at least every 15

months thereafter, ensuring they take place on time, that minimum notice is given, and that formal minutes of proceedings/decisions are taken;

- Look after company documents and company seal (if one), and maintain Statutory Registers for the following information:
 - Members
 - Directors
 - Company secretaries
 - Directors interests
 - Debenture Holders
 - Charges
- Convene other general members' meetings and ensure minute books are maintained for these and for directors' meetings;
- Prepare and file information required to be sent to Companies House;
- Registered office of the company and any changes;
- Changes in the make-up of the Board;
- Annual Return, as mentioned above;
- (In the case of charities) Submit accounts and an annual return to the Charity Commission by the dates required;
- Arrange for all necessary actions concerning the end of the financial year, such as drafting accounts, arranging an accountant's report or audit, updating registers, calling the AGM;
- Ensure procedures concerning legal agreements and/or contracts are followed, and in conjunction with the Board take responsibility for compliance with other legislation as appropriate (eg. health and safety, employment acts, equal opportunities).

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