

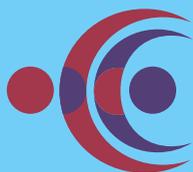


Directors

Their duties and powers



A quick guide



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement



Plain English

Approved by NALA

Introduction

We have produced this information booklet to explain the role of company directors under the Companies Acts.

What is a company director?

Company directors control and direct a company in the interests of its owners (known as members). They also have particular responsibilities under the law and the company's constitution. A company must have at least two directors. These act together on a board of directors.

Who can be a company director?

People do not need any particular qualifications or experience to be directors. Company directors will often not work for the company in question or own shares in it.

To protect the public, some people cannot be directors at certain times. These include bankrupts, who are prohibited from being directors while their debts remain unpaid or until a court excuses them from paying those debts. People whom a court has found guilty of fraud or serious misconduct may also be disqualified from acting as directors for a certain period. If a person is found by a court to have acted dishonestly or irresponsibly in a company that failed to pay its debts, the court may restrict them. A restricted director can only act as a director in certain companies in which the members have invested a significant amount of money. Restrictions are normally for a period of five years.

Are there different types of director?

There are five types of company director.

- Executive directors are directors who are involved in managing the company. Examples include the company's managing director or its sales director.
- Non-executive directors are not involved in the company's management. They may be knowledgeable and experienced people who are appointed to the board to give independent advice. Companies do not have to appoint non-executive directors.
- Alternate directors are chosen by directors to act for them in their absence.
- De facto directors perform the duties of a director even though they are not formally appointed and registered. They have the same duties as appointed directors.
- Shadow directors are not formally appointed as directors but give instructions that are usually followed by the company's directors. A shadow director has many of the legal responsibilities of an appointed director.

What are the duties of directors?

Directors are trustees or minders of the company's assets and their duties reflect that responsible position. Executive and non-executive directors have the same duties.

Directors do not have to do everything themselves. They may give appropriate tasks to company executives who will report back to the board.

Common law duties of directors (the duties created by the courts)

The common law duties require that:

- directors must act in good faith and in the company's interest and not use their powers for personal gain or for the benefit of others at the company's expense - for example directors should pay the market value for company assets;
- directors must not profit from being a director and must account for any profit secretly obtained – for example a director who is also a director of a second business cannot use any confidential information they receive as a director of the first company to benefit that second business; and
- directors must act with due care, skill and diligence – for example, directors need to meet regularly to review the company's finances and take action to correct any problems.

Statutory duties of directors (the duties created by legislation)

On their appointment, directors must give the company their name, address, date of birth, nationality and occupation. They must also give details of any shares or debentures (written acknowledgements of a debt) in the company or in related companies that they own or in which they have an interest. They must also give details of any other companies of which they are a director. For as long as they are serving as a director, they should keep the company up to date on any changes to this information. They should also inform the company if they have any interest in a company contract or proposed contract.

Directors must ensure that the company keeps proper books of account that record and explain the payments to or from the company or its customers and suppliers and accurately identify its assets and liabilities. Every year, directors must prepare financial statements that give ‘a true and fair view’ of the company’s affairs. These financial statements must be audited (unless the company can decide not to have an audit).

Directors must also write a report for the members of the company. This report should include details of:

- how the company is doing;
- how its business has developed during the year;
- any important events affecting the company since the end of the year; and
- any likely developments in the business.

Directors must arrange to call the company's annual general meeting (AGM) and circulate a draft agenda to the members in good time along with other relevant documents, including the financial statements, the directors' report and any auditor's report. Occasionally, directors will have to call an extraordinary general meeting (EGM) of the members to deal with special or urgent business.

Directors must arrange to keep minutes of what is said and decided at general meetings and at meetings of the board and its sub-committees. They must ensure that the company keeps certain documents up to date, including the registers of members, directors and secretaries and the interests of the directors and secretaries in the company.

Directors must ensure that the company promptly sends certain documents and information to the Companies Registration Office (www.cro.ie). These include, for example:

- the company's annual return and associated financial statements;
- notice of a change of registered office, director, secretary or their details;
- notice of the creation of a mortgage or charge on the company's property in return for its receiving a loan; and
- a memorandum of satisfaction of a charge (a statement that a loan has been repaid).

Directors can be penalised if they or the company are found to have breached the Companies Acts. In cases of serious default, they can be made liable for the company's debts.

What are the powers of directors?

In general, directors may do anything that is legal and is allowed by the company's constitution. However, the members have the responsibility to make some company decisions at a general meeting. These include the decision to appoint or reappoint the company's auditor.

What other issues should directors be aware of?

Transactions between the company and its directors

Some exceptions apply to the general rule that directors cannot use company assets for their own benefit. For example, a company may give loans to directors and people or organisations connected by family or business to the directors if the total loan value does not exceed 10% of the company's 'relevant assets'.

A company may also engage in a property sale or purchase with a director or connected person in certain circumstances. Key conditions are that the directors must justify the merits of the proposed transaction to the members and that a majority of the members approve of it at a general meeting before the transaction can take place.

Solvent liquidation

If a company is wound up on the basis that it can pay all of its debts, the directors must make an accurate statement to this effect.

Trading difficulties

If a company finds it difficult to pay its debts, the directors must favour the interests of the people to whom the company owes money (creditors).

Reckless trading

If directors help to create a company debt knowing that the company will not be able to pay the creditor, they may have to pay some or all of the company's debts themselves if this is ordered by a court.

Insolvent liquidation

If a company does not have enough money to pay creditors and the company is later wound up, the directors must prepare a statement of its assets and liabilities and co-operate with the liquidator.

Struck off insolvent companies

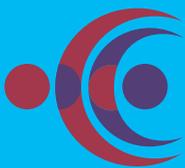
If directors fail to arrange for the liquidation of a company that owes a large debt to one or more creditors, the High Court may disqualify them from acting as directors if the company is later struck off the Companies Register for failing to file its annual returns.

Conclusion

A more detailed information book on directors is available under Decision Notice D/2002/1 from www.odce.ie.



Notes



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