

Director Responsibility Checklist

Expert knowledge means success



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The need to be responsible

These days, it's more important than ever that directors of limited companies are aware of their responsibilities under the law.

We've designed this quick checklist to help you fulfil your duties as a director. The list is by no means exhaustive but it pinpoints many of the most critical areas.

Tick each box only if the answer is yes. Be truthful - your career could depend on it.

Personal Qualities - Do you:

- Act reasonably and honestly at all times?
- Show loyalty and good faith to the Company?
- Know enough about being the "captain" of your company to steer it in the right direction?
- Encourage, respect and act on feedback from other directors and senior managers?

Legal Requirements - Do you:

- Make sure the full registered name of the Company is displayed at the premises and on all company documents?
- Ensure the full registered name of the Company is shown on cheques and only sign for and on behalf of the Company?
- Ensure that the Memorandum and Articles of Association authorise relevant acts before proceeding?
- Know that a director can be jointly and severally liable for the acts of co-directors - therefore be aware of their actions?
- Disclose any interest in contracts at a meeting of the board of directors?
- Ensure that the requirements of the Companies Act 1985 are fully complied with in respect of accounting records, annual accounts, transactions with directors, statutory books and the annual return

Management of the Company - Do you:

- Ensure that up-to-date financial information is available, including information about the future viability of the Company?
- Know at all times the financial health of the company?
- Know the responsibilities of directors under the law?
- Satisfy yourself as to the continuing viability of the Company and its future prospects
- Never place orders or allow them to be placed except explicitly on behalf of the Company?
- Try to give the banks a debenture instead of a personal guarantee?
- Check company credit and charge card arrangements?
- Hold regular board meetings and maintain proper minutes (in other words, make sure that you do not run the Company on an informal basis)?
- Make sure that all remuneration is properly approved?
- Ensure that all tax liabilities are paid to HMRC?
- Ensure that VAT procedures are correctly followed?
- Make sure that PAYE and NI is properly applied?
- Be wary of risky ventures that could jeopardise the future viability of the Company?

Specific Do's and Don'ts - Are you sure that you:

- Do not unreasonably induce the Company to break a contract?
- Do not make a personal profit; at all times act as a trustee on behalf of the Company?
- Are willing to resign from part-time or other directorships where it is not possible to regularly monitor the progress of the Company or where the ability to act responsibly is compromised?
- Seriously consider directors' insurance cover?



- If the company is insolvent, do everything possible to minimise the loss to creditors and obtain professional advice?
- Are willing to resign if the Company is about to commit a wrongful act (although this of itself may not always give protection)?
- Have a proper business plan?
- Have a proper marketing and sales plan and strategy?
- Are aware of what's going on in your marketplace?

Professional Advice - Do you always:

- Obtain professional advice whenever required?
- Ensure that where professional opinion is obtained, particularly as regards future projections, it is always confirmed in writing?
- Ensure that you are provided with an efficient and responsive service in connection with financial, including management, information and its interpretation?

Personal Development - Do you:

- Take a positive view towards self-improvement?
- Have regular coaching sessions with someone who can help you perform better at work?
- Take time to work ON your business rather than working IN it?

Take care - Directors can be disqualified¹

Insolvency Practitioners appointed to a company as Administrative Receiver, Administrator or Liquidator in a creditor's voluntary liquidation have a duty to report to the Insolvency Service on directors' conduct within six months of the date of their appointment. The Insolvency Practitioner's report can form the basis of disqualification proceedings brought by the Insolvency Service/Department for Business, Innovation & Skills (BIS).

If these proceedings are successful a director can be disqualified from acting as a director for between two and fifteen years.

The report concentrates on the following areas of directors' conduct:

- Attempted concealment of assets;
- An unexplained or inadequately explained deficiency to creditors;
- Disposal of assets at an undervalue;
- Preferred payments to certain creditors;
- Loans from the company to directors;
- Overvaluing assets in accounts for the purpose of obtaining finance;
- Sale/transfer of assets to directors;
- Dishonoured cheques/use of delaying tactics with creditors;
- Non-payment of Crown debts to fund trading;
- Phoenix operations;
- Misconduct in relation to factored debts;
- Taking deposits when goods/services ordered are not supplied, especially in respect of members of the public;
- Trading when insolvent.

The Insolvency Practitioner will also take into account the following:

- The position of any civil action against the directors;
- The adequacy of accounting and statutory records;
- Any professional advice obtained by the directors.

The above list is by no means exhaustive, but highlights the main areas on which Insolvency Practitioners will concentrate their investigations and therefore those areas where directors are most at risk if their company is in financial difficulties.

Insolvency Practitioners have a duty to submit a report on directors' conduct regardless of whether there are sufficient assets in the case to pay the costs of preparation of the report. The report must cover the conduct of directors in office at the date of insolvency and also all directors who held office in the three years prior to the date of insolvency. The report will also cover the conduct of any person who acted as a director whilst not holding the office of director, such as a "de facto" or "shadow" director.



Further Information

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

Acknowledgement

¹ With acknowledgement to an article by Insolvency Practitioners Levy Gee (now part of Numerica) in "Insolvency Update" - Tel: UK +(0) 1903 2222500

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Publication issued or updated on:
24 February 2012

Ref: 31

