

## **LEGAL ROLES AND RESPONSIBILITIES OF BOARD DIRECTORS**

### **Responsibilities**

The board of directors of the society is primarily responsible for:

- determining the company's strategic objectives and policies;
- monitoring progress towards achieving the objectives and policies;
- appointing senior management or the executive in a small company;
- accounting for the company's activities to relevant parties, e.g. shareholders or members.

### **Appointment**

The first directors of a company are appointed at the time of its registration. On registration, the persons named will be deemed to have been appointed as the first directors. Subsequent appointments are governed by the society's model rules. The model rules will provide for the board of directors to fill any casual vacancies or to appoint additional directors up to the maximum number specified by the rules.

On appointment a new director will be asked to provide certain personal information (i.e. full name, address, date of birth, nationality, country of residence, former names and business occupation) to be included in the relevant form which he/she will be required to sign to signify consent to act as a director. It is possible for a director to file a service address at Companies House as well as his or her home address. It will be the service address (which can be the registered office of the company) that appears on the public record.

Additionally, the director will give a general notice of any interests in contracts involving the company. Directors of quoted public limited companies (plc) are required to declare their interest in the company's shares under the Disclosure and Transparency Rules.

On a practical note the new director should make sure that he/she receives: a copy of the society's memorandum and articles of association; details of the business and affairs of the society, e.g. recent board minutes and management accounts; and the statutory reports and accounts for the past two years. New Directors should also declare any directorships which they hold in other companies.

### **Powers**

The directors are generally responsible for the management of the society and they may exercise all the powers of the company. However, the extent of their authority may be constrained by the Cooperative and Community Benefit Societies Act 2014 and the model rules. For example, model rules often include provisions and restrictions on borrowing, dissolution etc.

Generally, the directors must act collectively as a board to bind the company. However, the rules usually entitle the board to delegate powers to individual directors as considered appropriate or committees. In practice individual directors will normally carry out many of the company's activities.

## **Statutory Duties**

Directors need to be aware that they are personally subject to statutory duties in their capacity as directors of a company. In addition the company as a separate legal entity is subject to statutory controls and the directors are responsible for ensuring that the company complies with such statutory controls.

The Companies Act 2006 codified certain common law and equitable duties of directors for the first time. The Act sets out seven general duties of directors which are:-

- act within powers in accordance with the company's constitution and to use those powers only for the purposes for which they were conferred
- to promote the success of the company for the benefit of its members
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare an interest in a proposed transaction or arrangement

The statutory duties that replace the fiduciary or equitable duty are interpreted in accordance with the previous case law which remains relevant. These statutory duties cannot be seen in isolation because in addition a director will be subject to a wide range of regulation and legislation including the Insolvency Act 1986, the Company Directors' Disqualification Act 1986, the Health and Safety at Work etc Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.

The company secretary as chief administrative officer will be responsible for the performance of many of the administrative duties imposed under the Companies Act 2006.

Directors may be liable to penalties if the company fails to carry out its statutory duties. However, they may have a defence if they had reasonable grounds to believe that a competent person had been given the duty to see that the statutory provisions were complied with.

One of the main statutory responsibilities falling on directors is the preparation of the accounts and the report of the directors. It is the responsibility of the directors to ensure that the company maintains full and accurate accounting records. This includes the preparation of a balance sheet and a profit and loss account for each financial period of the company, and the presentation of these to shareholders and, subject to various exemptions, the filing of the accounts and report of the directors with the Registrar of Companies.

## **Liabilities**

Directors may incur personal liability, both civil and criminal, for their acts or omissions in directing the company.

It is beyond the scope of this paper to list all the various matters for which directors can be held to be liable. However, directors should be aware of the effects of the Company Directors' Disqualification Act 1986, which could lead to the disqualification from acting as a director of a company for a period of between two and fifteen years, and the Insolvency Act 1986 which gives rise to

the possibility of directors being made personally liable for the company's debts, the Health and Safety at Work etc Act 1974, and the Corporate Manslaughter and Corporate Homicide Act 2007.

### **Company Directors' Disqualification Act 1986**

The circumstances in which an application may be made for the disqualification of a director are as follows:

- the director has been guilty of three or more defaults in complying with companies legislation regarding the filing of documents with the Registrar of Companies during the preceding five years;
- he or she is, or was, a director of a company that has at any time become insolvent and that his/her conduct as a director of that company makes him/her unfit to be concerned in the management of a company;
- the director is found to be guilty of wrongful or fraudulent trading as defined in the Insolvency Act 1986 (see below).

### **Insolvency Act 1986 Wrongful Trading**

If a company has gone into insolvent liquidation and before that liquidation took place a director knew, or ought to have known, that there was no reasonable prospect that the company could avoid the liquidation, then the court may declare that the director make a personal contribution to the company's assets.

However, the director will not be made personally liable in circumstances where he/she can show that he/she took every step prior to the liquidation to minimise the potential loss to the company's creditors.

### **Fraudulent Trading**

Under this heading the court may also require a director to make a contribution to the company's assets if, in the course of the winding up of a company, a director was knowingly a party to the carrying on of the company's business with the intent to defraud the creditors.

### **Health and Safety at Work etc Act 1974**

Health and safety law places duties on organisations and employers, and directors can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety. Larger public and private sector organisations need to have formal procedures for auditing and reporting health and safety performance.

If a health and safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under section 37 of the Health and Safety at Work etc Act 1974.

Those found guilty are liable for fines and, in some cases, imprisonment. In addition, the Company Directors Disqualification Act 1986, section 2(1), empowers the court to disqualify an individual convicted of an offence in connection with the management of a company. This includes health and safety

offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence.

Individual directors are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under the common law, gross negligence manslaughter is proved when individual officers of a company (directors or business owners) by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment.

**Corporate Manslaughter and Corporate Homicide Act 2007**

Under this Act, an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction and fine.

Source: Institute of Directors Factsheet