



INTERNATIONAL
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FEDERATION

Board Manual Section 1 e Duties of an Isle of Man Company Director

1. Duties of Directors

- 1.1. Every company should be headed by an effective Board which is collectively responsible for the long-term success of the company.
- 1.2. Directors have overall responsibility for how a company is managed and run which means they must oversee, supervise, govern and control the company's activities and operations. Directors also have ultimate responsibility for leading the company by determining direction and strategy, monitoring and reviewing performance against agreed targets and objectives, making revision where necessary
- 1.3. Directors are subject to certain minimum standards of care, skill and diligence in discharging their duties. As a general rule, the standard applied will be that of the "reasonable person test". It should be noted that a higher standard is likely to be applied to a person who offers her services as director who is qualified in a profession or by way of business expertise.
- 1.4. Failure to properly execute the duties and responsibilities of a director may result in civil and/or criminal proceedings being brought and subsequent disqualification as a director.
- 1.5. The overriding principle is that directors must act honestly and reasonably.

A summary of the main duties of a director towards his company is set out below. All references are to the **Isle of Man Companies Act 2006**. This summary is not an exhaustive and complete statement of a director's duties and is subject to change. Directors who are unsure about their duties as a director in any particular circumstances should seek professional advice.

- **Loyalty** - A director must act in good faith in what she considers to be the best interests of the company.
- **Obedience** - A director must act in accordance with the company's constitution (the Memorandum and Articles of Association) and must exercise her powers only for the purposes allowed by law.
- **Independence** - A director must not agree to restrict her power to exercise an independent judgement.
- **No secret profits** - A director must not use the company's property, information or opportunities for his own or anyone else's benefit, unless either the company has agreed to this in general meeting, or the company's constitution expressly provides for this. It should be noted that consent may not be sufficient in certain circumstances.
- **Conflicts of Interest** – Directors must exercise great care if a situation arises which could lead to a conflict (actual or potential) between their personal interests and their duties owed to the company or to a third party. A director must account to the company for any benefit received from a transaction that arises from a conflict of interest or duty. This applies whether or not the company sets aside the transaction. Where the company's constitution expressly permits the transaction, a director will not have to account to the company provided the relevant requirements and terms of the company's constitution have been strictly adhered to, or where the interest or duty has been fully and properly disclosed to the board of the company. Sections 103 to 105 of the 2006 Act expressly permit a director of a company to retain the benefit derived from an interest in a transaction, provided that the director has disclosed her interest to the Board of directors of the company. Disclosure must be made as soon as she becomes

aware that she has a conflict of interest. Subject to any provision to the contrary in the company's constitutional documents, and having disclosed her interest, a director may participate in any decisions that the board takes in relation to that matter. The duty of directors to disclose any interest to the board of directors of the company is set out in section 104 of the 2006 Act.

- **Care, skill and diligence** - A director owes the company a duty to act with the care, skill and diligence that a reasonable person would exercise. In determining whether a director has acted with due care, skill and diligence, consideration will be given to: (a) the general knowledge, skill and experience that may reasonably be expected from a person carrying out the same functions as are carried out by that director in relation to the company, and (b) the actual knowledge, skill and experience which the director has.
- **Fairness** - Each director must ensure that her dealings with members are conducted impartially.

2. Powers of Directors

- 2.1.** The powers of directors are derived from law. However, the constitutional documents of a company may contain additional provisions relating to the management of the company. The powers must be exercised:
- in what a director honestly believes to be the best interests of the company; and
 - for the purpose for which the power is intended.
- 2.2.** The Board of directors will normally exercise their powers collectively. However, in certain circumstances and where permitted by the Articles of Association, certain powers may be delegated to one or more persons, including to non-directors. However, a director cannot delegate her responsibilities.
- 2.3.** The Board of directors are responsible for the management of the company. They are not agents of the members of the company and the members cannot determine how the directors should exercise their powers. It is important that directors are mindful of any attempts by others to influence either themselves or any other Board member in such a way so as to undermine the exercise of their powers. Members have a statutory right to remove a director where the director fails to act in the best interests of the company. (See section 96 of the 2006 Act).
- 2.4.** Directors have, both collectively and individually, a continuing duty to acquire and maintain sufficient knowledge and understanding of the company's business to enable them to properly discharge their duties as directors. Whilst directors are entitled (subject to the articles of association) to delegate particular functions to committees/panels which they set up and to trust their competence and integrity to a reasonable extent, this exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.
- 2.5.** A director cannot delegate or abrogate her overall responsibility for the affairs of the company. Directors remain responsible for the exercise of powers they delegate. Where delegation is properly authorised, the directors must monitor properly the exercise of the delegated powers. Provided it is duly authorised to do so, the Board of directors may delegate its powers to a third party. For example the Board may pass a resolution agreeing to enter into a contract and may, by power of attorney, authorise a third party to execute the contract. In all such circumstances, the Board should restrict the attorney's powers to ensure that the Board retains control over the company's affairs.
- 2.6.** A director is entitled to rely on information given by an employee, expert, professional adviser or another director in relation to matters within that person's competence or responsibility, provided that the director acted in good faith, and made proper enquiries. But ultimately the directors, as a Board, must themselves exercise their judgement.

2.7. It is the responsibility of the directors to meet, discuss and if appropriate, approve all material transactions the company is entering into. While the directors can rely on opinions provided by the company's lawyers, accountants and other advisers, such reliance should not be unquestioning. The decision whether or not to enter into a transaction remains one for the independent judgement of directors, together as a Board, to make.

3. Knowledge of the Legal Framework

3.1. All directors must operate within the legal framework of the laws of the Isle of Man (or be reasonably able to rely on someone who possesses the relevant knowledge), to ensure that the company's operations comply with all relevant laws. In addition, directors must also have sufficient knowledge (or be reasonably able to rely on someone who does) of the laws of any other jurisdictions within which their company may operate (for example the United Kingdom where the Secretariat are based) or do business with, and ensure that such operations comply with those laws.

3.2. In addition to complying with relevant laws, all directors should ensure they have knowledge of the Memorandum and Articles of Association of the company. The Memorandum gives the basic information about the company (name, registered office, type of company etc.) and the Articles of Association deal with the internal conduct of the company's affairs.

3.3. A 2006 Act company may also tailor its own articles, within the powers and limitations of the relevant statutory requirements, to meet its particular needs.

3.4. It should be noted that the 2006 Act only permits companies to do certain specified acts if their Articles of Association also authorise it. For example, the directors of a 2006 Act company can only remove a fellow director if this is expressly permitted by its constitutional documents (section 96(4) of the 2006 Act).

3.5. The 2006 Act allows flexibility concerning the internal management of the company and many sections of the 2006 Act allow the company's constitutional documents to provide otherwise than is required by or stated in the 2006 Act. For example, under section 106(1) of the 2006 Act, the directors of a 2006 Act company "may meet at such times and in such manner and places within or outside the Isle of Man as they may determine to be necessary or desirable and can regulate their proceedings as they see fit, subject to any contrary provision" in the Memorandum or Articles of Association.

3.6. A company's Memorandum and Articles of Association have no effect to the extent that they contravene or are inconsistent with the Act. This is stated in section 7(2) of the 2006 Act.

4. Liabilities – Criminal and Civil

4.1. Generally, the 2006 Act imposes duties on the company itself but section 223 provides that if an offence committed by the company is proved to have been committed with the consent or connivance of or to be attributable to neglect on the part of a director, manager or other officer of the company or its registered agent, or a person who was purporting to act in any such capacity, that person as well as the company is guilty of the offence and is liable to be proceeded against and punished accordingly.

4.2. Where a director acts in breach of her fiduciary duty, she may be liable to indemnify the company for any loss it has suffered as a result, and to account to the company for any profit made. In some cases the members, with full knowledge, can ratify the actions of the directors. Such ratification cannot obviously be guaranteed and, in any event, may not be sufficient in some circumstances.

4.3. A director must always remember that she may be held accountable for losses if she has not complied with her statutory and fiduciary duties or failed to exercise the requisite duty of care, diligence and skill and that there is no such entity as a "nominee" director.

- 4.4. Directors should also be aware of potential liability on a "constructive trust" basis if they are engaged or assist in wrongful conduct. A constructive trust is imposed where a person receives assets and, although there is no formal recognition by her that anyone else has any interest in them, it would be inequitable to deny such an interest.
- 4.5. Directors should also be aware of the various statutory provisions which impose personal liability on directors guilty of wrongdoing. For example section 182 of the 2006 Act contains detailed provisions in relation to the personal responsibility of directors for fraudulent trading. If a director enables a company to carry on business and incur debts when to the knowledge of the director there is no reasonable prospect of the debts being paid, the director could suffer personal liability in such circumstances.
- 4.6. Section 182 of the 2006 Act gives the court wide powers to make an order requiring a director to repay or restore any money which she has misapplied or retained or become liable or accountable for to the company or to contribute to the company's assets an appropriate sum by way of compensation. In addition, section 51 of the 2006 Act imposes a statutory personal liability on directors of a company where a 'distribution' has been made by the company to the members and the company did not, immediately after the distribution, satisfy the solvency test.
- 4.7. There are also statutory provisions which enable the Isle of Man High Court to make orders disqualifying individuals from acting as directors (see Company Officers (Disqualification) Act 2009).

5. Administration and Accounts

- 5.1. The directors are responsible for the company's administration, including maintenance of proper accounting records, minutes of meetings, statutory books and filing of information at the Companies Registry. It is usual for these information filing duties to be delegated to the Registered Agent of a 2006 Act company - but this does not relieve the directors of the ultimate responsibility.
- 5.2. Under the 2006 Act the obligation to maintain accounting records falls on the company and the Registered Agent is required to hold copies of such records. However, the responsibility for accounting records lies with the directors as they are responsible for the management of the company (see section 91(1) of the 2006 Act). The 2006 Act does not require a company to prepare financial statements but members have the right to require financial statements to be produced (section 80A of the 2006 Act). The 2006 Act only requires a company to appoint an auditor where the company's securities are listed or admitted to trade on a securities market or exchange but the company's constitutional documents may require an auditor to be appointed. There is no statutory requirement in the 2006 Act to lay accounts before the members in general meeting or send them copies. However, members may on request access the accounting records of a company (section 82 of the 2006 Act).

6. Board Meetings

- 6.1. **The powers of directors are not individual but collective.** The directors should therefore exercise their powers by holding Board meetings at which collective decisions are taken. The Articles of Association may stipulate when and how Board meetings shall be held, and the quorum requirements. A meeting cannot proceed to business unless a quorum is present. Any member of the Board is entitled to call a meeting of directors and every director is entitled to receive notice of a meeting.
- 6.2. Minutes must be kept of the proceedings of Board meetings. Once agreed and signed by the chairman of the meeting they are evidence, though not conclusive evidence, of the proceedings to which they relate. A written resolution, may replace a meeting of the Board (section 109(3) of the 2006 Act).

7. Good Corporate Governance

- 7.1.** Corporate governance is the system by which a company is directed and controlled and the way the company's business is run. The Board of directors is only one component. Good corporate governance can best be achieved by appropriately experienced and qualified individuals applying informed and independent judgements. Directors have an important role in leading from the top in ensuring good corporate governance by determining how direction and control measures flow down through the company and how reports are generated, reviewed and flow up through the reporting framework.
- 7.2.** Looking at governance, directors need to carefully consider:
- what the company is trying to achieve and what needs to be done to get there – hence the need for strategic planning and objective setting, filtering down to more detailed plans and targets for particular parts of the business.
 - what risks might prevent the company from achieving its strategic objectives and how they can be monitored, controlled, avoided or mitigated. This to be achieved by thorough and wide-ranging assessments of possible risk and implementation of risk management systems.
 - what review and internal control processes are necessary to ensure everything stays on track and, if not, identify when and what corrective action or measures are needed before damage is suffered to such an extent that it might prevent the company achieving its strategic objectives.
- 7.3.** The law makes no distinction between the standards to be observed by executive and non-executive directors in discharging their duties. The responsibilities and duties they are subject to do not differ. Non-executive directors are widely recognised as having a useful and independent role to play in ensuring that the company's activities are undertaken in compliance with the law and adhere to principles of good corporate governance.

This guidance is intended as a general guide only and must be read in conjunction with the relevant legislation. The guidance is general in scope and is not in any particular order of relative importance. It is derived from the duties and responsibilities that already exist at law but is not exhaustive and further guidance, if required, should be obtained from a professional adviser.

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