



Abell Morliss International



DIRECTORS

what's it all about –
yachts, international travel, golf
--- any **work** involved?

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Intro Quiz Question:-

How much of my companies profits do I get to spend?

Answer:-

80%

.....because of Corporation Tax...



Overview

Directors run limited companies on behalf of the shareholders, who very kindly provided the dough to set up the venture that is now funding the directors lives, who may or may not be the same persons.

It is pretty obvious that directors have the responsibility for ensuring the success of their company, and must also keep a beady eye on all the gumph that comes with running even a small operation in the UK. - areas such as health and safety, employment law, tax, annual accounts, financial management, fobbing off all the regulatory authorities who keep popping in.

The Companies Act 2006 requires company directors to act in a way which is most likely to promote the success of the business. (no brainer).

They technically run the risk of penalties if they don't ensure that key information is sent to Companies House/HMRC et al on time.

Every limited company must have at least one real person director. If a limited company has more than one director, other directors can be another company. A public limited company (or plc) must have at least two real directors. Why is a 'not real' person ever needed? Because you can hide the identity of persons linked to a company in certain circumstances, or it might be because a syndicate of three companies has a joint venture company and they each have a directorship. In practice it means they can send any loafer to the joint venture Board meetings as they are acting on behalf of the directorship of their own limited company.

Every director should have their own current copy of the Memorandum and Articles of the company as they should always have regard to their powers as defined and limited within the Articles. Failure to understand these is both silly and could be personally expensive. Ignorance reveals stupidity but does not constitute a defence!

The shareholders appoint whom they want as directors at the AGM. But there are restrictions on candidates:-

- J they must not have been disqualified by a court from being a director - if they have, court permission is needed (unlikely)
- J they must not be an undischarged bankrupt - if they are, court permission is needed (unlikely)
- J they must not be under the age of 16 – this is a newish rule
- J appointment of directors must also comply with the company's Articles of Association. Something there is much case law covering if you are short of sleepiness. For example the M/Arts might say that directors serve for single 3-year terms, and must then stand down for a year before foisting themselves on the Board/Shareholders again. Or it could be that all directors must live in Yorkshire say -to be near the factory, so if you move to Lancashire you are no longer a director. This would over rule any shareholder votes unless they first changed the M/Arts.

A director may be involved in day-to-day management, but doesn't have to be. BUT non-executive directors still have the same legal responsibilities as other directors. HELLO are you listening? Non-execs are in same boat as EXECs for liability for the stupidity of employees etc. – see further on.

The Board must tell Companies House within 14 days when:

- J they appoint a new director –
- J or someone stops being a director –
- J or director details change
- J In practice this rule is widely breached with seemingly no consequences, although CoHo could wake up any time!

Directors' responsibilities

Directors have a responsibility to prepare and deliver :-

- J the Companies House annual return – list of directors/shareholders
- J the annual accounts within 9 months of the y/e and file them at Companies House
- J notification of any change in the company's officers or in their personal details
- J notification of a change to the company's registered office
- J registration of charges/mortgages
- J any single director can bind the company by contract. NB even if the Marts say it must be two etc., this is unlikely to be supported by a Court, as a creditor would claim ignorance of this restriction if enough money was at stake. Indeed if someone **holds out (this is a legal term)** they are a director/authorized person to a third party it is most likely the company will be bound by the contract.

NB. <https://legal-dictionary.thefreedictionary.com/holding+out>

Directors have a duty to :-

- J implement Board decisions
- J accept collective responsibility – board decisions have to be supported or you walk.
- J Always have the best interests of the company at the forefront

If a company has a company secretary, company directors will usually delegate their responsibility for ensuring sending up-to-date information to Companies House to the company secretary. However, ultimate responsibility for delivering the required documents STILL remains with the company's directors. There is no defence of “Bert was supposed to do it”.

Directors' powers and financial liabilities

The company's Articles of Association limit what directors can do. Although they usually give you a great deal of freedom, you must check them.

For example:-

- J they might be restricted by the company's objectives from running a particular type of business - for instance gambling or banking.
- J not be allowed to borrow money, or only up to a set amount
- J possibly prevented from issuing shares without shareholder prior approval
- J the M/Arts will definitely cover what to do when disagreements arise e.g. Chairman of Board has a casting vote on deadlocks – so appoint a Chairman BEFORE the Board does anything interesting in a new company.
- J Help yourselves by avoiding EVEN numbers of directors on the Board, - so votes always get decided DOH!

The Companies Act 2006 confirms previous case law and requires company directors to act in a way most likely to promote the success of the business.

They must exercise a degree of skill and care. They must:

- J show the skill expected of a person in their position and act as a reasonable person would do when looking after their own business
- J They must act in good faith in the interests of the company as a whole.
- J treating all shareholders equally avoiding conflicts of interest declaring any conflicts of interest
- J not making personal profits at the company's expense
- J not accepting significant benefits from third parties without declaring them promptly to the Board.

They must obey the law, and do their best to ensure the collective company obeys the law.

In areas such as health and safety, employment law and tax, they are mostly responsible for **all** the actions of company employees. Examples:-

- J If serf Mr. I Diot sends a sexist email to a 3rd party using the company email system, and it causes offence etc., it is the company i.e. director that is hauled before the beak. This could apply even if they used their personal gmail account whilst at their office amstrad.
- J Similarly if serf Mr. B Iggeridiot instructs a driver to make a van delivery using a vehicle (whether or not owned by the company) unfit for the road, and the driver then runs over a bus queue it is the company director (who of course knew nothing of this madness) that stands there looking a fool in court with a toothbrush in their pocket.
- J Your defence in such circumstances is to point to the 14,764 page staff procedures / elf 'n safety manual, which is updated ceaselessly, discussed at every Board meeting, and issued on a signed-for basis to every member of staff each time it is changed. This may get the Beak to let you off prison, and just pay a massive fine, → if you're very very greasy to him.

If in doubt, directors should take professional advice, and their appointment terms(*) should give them individually this right, using company funds. Similarly all directors should be properly insured in case they do get hung out to dry by an employee. Acting improperly can lead to fines, disqualification from being a director, personal liability for the company's debts or a criminal record. And possibly even exclusion from the golf club – see later on!!

appointment terms(*) – define please.....

yep, you should have a proper appointment letter, and contract, spelling out lots of this stuff - all in a letter that BOTH sides sign in front of 43 witnesses of similar stature to the Pope. And BEFORE you are appointed Director at all for a nano-second.

See here a recent example of how (if enough dough is at stake) your company is liable for the malicious acts of one of your own employees **against his own work colleagues** (what a lovely guy they had) 100% without your knowledge, permission etc. The creep was acting solely on his own malicion, and yet his poor innocent employer is guilty just because the employer couldn't **prove** to the beak that he had tried hard enough to stop him being a turd.

This highlights again that you need documentary proof of everything done to do with data, so that you can use it as your figleaf when in front of the judge in your birthday suit answering his probing questions.

Morrison's have wasted £2m+ in costs already fobbing the consequences of this imbecile off, and still more to go. And they might lose in Court and have to compensate their staff too.



PS. We recommend that if anyone called Andrew Skelton registers to use any of your software, or tries to access it, that you immediately block him. He's clearly a liability.

A new director should do a bit of reading to familiarize themselves with the fascinating new world they have entered. This guide raises questions they should then answer elsewhere. Professional training courses are available, and you can even be an anorak and take a qualification in being a director and add initials after your name – Inst of Directors for example. Incidentally this might help defend you in certain circumstances as you can say that you had been trained, were doing your best, but still hit choppy waters etc.....

Directors should meet formally regularly – perhaps every other month even in a small company-, and WRITE it down. A brief record of each meeting should be kept, and reviewed at each subsequent meeting. The meeting can very simple, table whatever vaguely interesting has happened since the last meeting as a short written note that you then record as “noted” etc.

But the second you take a short cut and skip a meeting but STILL produce a Minute as though you all met, you are DOOMED, as three years later when Armageddon abc happens, it will be that skipped meeting that will give the chink for someone to escape from/be allocated responsibility for abc.....

Abell Morliss International can of course attend and Minute such meetings, for a very modest palm-greasing, to make sure it's all done pukka right.

Directors should have written statements of procedure / best practice in the staff manuals to make sure that they can at least hold a fig leaf up if something does go wrong. And they should ensure staff are regularly re-issued with the manual (KEEP the evidence) and quizzed on it to ensure adherence in reality- not spirit.

For example, they must comply with employment law in all dealings with employees or they may be found personally liable for unfair dismissal, discrimination or unfair work practices. Racial/Sex discrimination is pretty easy to do, and pretty hard to defend in front of slippery lawyers. They should also ensure that the company complies with employment law changes.

There are also health and safety responsibilities that they must follow. They must ensure that they carry out regular risk assessments, record them carefully, and put a health and safety policy in place. If they employ more than five people their health and safety policy must be in writing. See the Health & Safety Executive (HSE) website. There are many

professional providers of support for these services, and we know one firm who are excellent – please ask for contact details if you want to talk to them.

Fire risk assessments for all company premises need to be carried out regularly and recorded. In some cases this might mean setting fire to things to prove they perform according to the spec. given to you by the slippery manufacturer – you can't rely on third parties (The Grenfell Tower scenario).

Directors have a responsibility to ensure the PAYE payroll is operated correctly and that the correct amount of PAYE is paid on time. Similarly for Corporation tax and VAT returns/payments.

Even though the Board may delegate many tasks to other organisations or individuals, e.g. the company secretary or their service accountants, they are still ultimately responsible for everything. Also you can't delegate H&S to another member of the Board and then wash your hands if they mess it up. Delegated duties therefore must be monitored to ensure Board policies are followed in reality.

Disqualification of directors

Potential causes of disqualification include:

- J allowing the company to trade while insolvent – unable to meet its bills as they fall due. This does not mean you can't rack up massive losses, it depends on the make up of the balance sheet
- J not keeping proper accounting records
- J trading illegally e.g. flogging rockets to some mad dictator in contravention of UN Resolution 798,325,987.2, or maybe holding out you are a firm of solicitors without meeting the rules
- J failing to prepare and file accounts
- J lying – especially to the authorities
- J not sending returns to Companies House
- J failing to send tax returns and pay tax
- J nicking company funds/assets. This is a tricky one in many situations, e.g. buying from a more expensive supplier who just so

happens to give thousands of Air Miles on all purchases which then funnily enough get credited to the directors' personal account not the company one is a no no. It is possible to get round this with careful procedures– just ask us!

) acting in your own interests rather than the company's

In some cases, they could also face criminal charges, fines, or being made personally liable for the company's debts - especially if convicted of trading whilst insolvent (not insolent!).

Disqualification proceedings are handled by the courts or the Insolvency Service. If they find against the director, they'll be disqualified for between two and 15 years. In reality this is quite hard to achieve. – but see later !

While disqualified, they must not:

-) be a director of any company
-) **or act** like a director - even without being formally appointed influence the running of a company through the directors. Shadow directors are listed in the Companies Act, and is a very fraught area as by definition a shadow is NOT an appointed director, so it's someone's 'opinion' that counts. – see later !
-) be involved in the formation of a new company
-) act in a way that promotes a company

Ignoring a disqualification order is a criminal offence.

So why be a director?

-) So you can tell your mates
-) You want to join the central management team and really be part of the guiding operation that takes the company forward
-) You're fed up with the stuffed shirts messing it all up
-) Because you were asked
-) Because you feel you are anyway - **Shadow directors** are listed in the Companies Act, and is a very fraught area as by definition a shadow is NOT an appointed director, so it's someone's 'opinion' that counts. But Shadows are as liable as real directors. Usually you

find out you're a shadow just as the manure finally touches the fan so why not be one officially ? - at least then you know why you can't sleep any more. – SEE the end of this fascinating booklet for a real example of a Shadow happening. This is not teeeeeedious-lawyer junk!!

- J Even small companies need two directors to give continuity and breadth of skills at the top.
- J So the company Board looks more impressive
- J You get to go to directors gatherings/jollies/seminars
- J If you have several directors you can give each other impressive titles – Chairman, Finance Director, Chief Executive, Head of Deliverables Resource and Security Unit (warehouse!) etc..
- J So your employer can justify to themselves giving you more dough
- J It is a part of career progression
- J You can justifiably wear a suit and tie to work
- J To enhance your own cv as it looks good
- J You become part of the public face of the company. People look to you to tell them what it's all about
- J You give press interviews about your interesting company with authority.
- J Your colleagues will suddenly become deferential, but more importantly have a clearer sense of who's in charge.
- J Even a small company might have only one director, who is not often in the office, -playing golf and yachting are soooo time-consuming – so a Production Director is appointed and a Business Development director, that way the destiny of the company is in safer hands

And of course.....

-) If the company does really well and goes assets skywards when it's a big important company, you will get to appear in Parliament in front of a Select Committee (wow) being grilled about how the years of hard work you put in, under-pinned by massive pay/yachts/offices, and yet you somehow failed to avoid the jagged rocks of bankruptcy for your business, throwing thousands of serfs out of work.

How many kinds of director are there?

- Only one – all the other descriptions are just common usage that change nothing in company law (Exec, non-exec, part-time, chairman, vice-chairman, sales director etc.)

However there is in lawyer-speak sort of three kinds they lurve to talk about:-

- De Jure director – legally appointed all the right forms signed, filed etc.
- De Facto director – filled in all the forms, maybe left the date off, or spelled name wrong, or Coho rejected the form for some nit-picky reason. Or reached end of fixed three-year term but didn't tell anyone. Or did it all right except the Board meeting to make the appointment was never held, or the Resolution wasn't passed validly. Failing to file the forms at Coho is NOT a way of avoiding becoming a director – they are merely a (compulsory) free filing service, -despite what banks think.
- Shadow director – this roughly is someone who pretends/acts like he/she is a director by perhaps signing cheques, placing orders, telling everyone what to do, chairing meetings about company strategy etc. He/she is invisible in the statutory records, but just as liable as a de jure director

What about company secretaries?

- They are sort of on the way out, as no private limited company actually HAS to have one anymore, however any company MAY have one if they choose. PLC companies must still have a Secretary as all those big cheeses need to be properly looked after.
- IF you have one, their main role is to service the functions of the Board – calling meetings, taking formal Minutes of meetings, making the practical arrangements, drafting possible resolutions, agendas
- Keeping the Company Registers of Shareholders, Directors, Seals up to date.
- Supervising the Dividend process
- They are often accepted as at least co-signatories to company formal papers e.g. a bank loan document
- Companies House accept their signature for filing papers
- They are often bank signatories
- Third parties often accept the representations of the Secretary when asking for formal confirmation of things.
- In PLC situations the cosec is often legally trained, or holds a recognised Company Secretary qualification.

We know what you're thinking, this is just a bunch of alarmist bumph to get you to spend time on something that will never apply to me. Well how about this news item in April 17 below?

City AM 25.4.17



Camila Batmanghelidjh and former trustees could be banned from directing firms

Kids Company scandal drags on

ALYS KEY

THE FOUNDER and former trustees of failed charity Kids Company face a ban on serving as company directors.

Founder Camila Batmanghelidjh, ex-BBC creative director Alan Yentob and former WH Smith CEO Richard Handover are among those in line for disqualification proceedings, Sky News reported yesterday.

The government's Insolvency Service wrote to lawyers representing the former board members to warn them of the move. The service has the power to ban individuals from directorships for up to 15 years.

The collapse of Kids Company in 2015 brought to light allegations of mismanagement, shortly after David Cameron backed a £3m government grant for the charity.

These big cheese guys all bitterly regret getting involved in something that they thought was just burnishing their personal ego profiles. They are now spending a fortune on lawyers fobbing off the Official Receiver keen to stop them being a director of ANY company for several years, which will definitely cramp their style, in fact permanently, because there are loads forms you fill in which ask "have you EVER been disqualified" Etc.

And in the wake of the appalling fire at Grenfell House, London there will be another whole bunch of directors ensconced with lawyers panicking about their personal liability for actions taken by companies they are director of (but actually knew nothing about what working procedures they were using due to lax practices). And this will run for years and years.

Oh the above is alarmist waffle from someone trying to get extra work is it?

Well here is an update in August 2017. It's all going soooo well is it?



CityAM(0) 1 AUG 2017

Metropolitan Police launched an investigation into abuse at the charity in 2015

Ex-Kids Company directors face board bans for up to six years

HELEN CAHILL
@HelCahill

FORMER directors of Kids Company, the London-based charity which collapsed in 2015, are facing directorship bans of up to six years, the Insolvency Service said yesterday.

All nine former directors, including the BBC's former creative director Alan Yentob, will be taken to court over allegations of mismanagement.

Chief executive Camila Batmanghelidjh was not a director when the government-backed charity folded. However, the Insolvency Service will argue she effectively acted as a director and should therefore be blocked from running other companies.

↓

ALL the grand fromages on KidsCo are for the high-jump/plank, Mrs Unpronounceable too, despite her not formally being a Director, as of course everyone knows who was pulling the strings, making decisions, fixing policy, and signing all the cheques.....

And now Carillion has gone south too with a massive Pension Scheme deficit being investigated – ding dong!

Remember – have procedures, systems, insurance, and be careful.

Other resources

Companies House	030 3123 4500 www.companieshouse.gov.uk
Acas Helpline	084 5747 4747
Health & Safety Exec Infoline	084 5345 0055 http://www.hse.gov.uk/guidance/index.htm
HMRC (no)Helpline	0300 200 3700 https://www.gov.uk/government/organisations/hm-revenue-customs/contact/vat-enquiries
Insolvency Service (once you are over the cliff and spiralling....)	084 5602 9848
Abell Morliss company director support service (chargeable, but faaantastico value for money)	020 7148 4785 www.chartered.org
Institute of Directors	020 7839 1233 http://www.iod.com/guidance

Any questions -email: abell@chartered.org

All advice comment herein is entirely given in the interests of assisting you in understanding the rôle of company directors in the uk.

Anything you feel applies to you should be confirmed by taking your own professional advice based on your unique circumstances.

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