

What you need to know about: **Becoming a director of a private limited company**

The directors of a company are appointed by the shareholders to make decisions about the day-to-day management of the business. Their duties are to the company and the company can pursue a director for a breach of those duties.

Duties of a director

With regard to taxation and paperwork, the directors must:

- act in accordance with the company's articles of association;
- pay Corporation Tax;
- file accounts within nine months of the end of the accounting reference period;
- file the company's annual tax return within 28 days after the anniversary of the company's incorporation;
- keep the company records up to date and report any changes to Companies House;
- register for and complete an annual Self Assessment tax return;
- disclose to the company's shareholders any benefits received from a transaction or contract by the company (unless they are unaware of said benefits)

Directors may make decisions either through a written resolution or a directors' meeting.

Any one of the directors can call a directors' meeting but must give reasonable notice of it. A quorum is necessary at the meeting for decisions to be valid, which is usually the attendance of two directors or their proxies. The directors will then vote at the meeting which can either be a show of hands in person or by electronic means.

Directors' powers

Directors are agents of the company and are granted powers by the company's articles to manage the business. These powers are usually utilised by passing resolutions at meetings, known as directors' meetings or board meetings.

The directors act jointly and most resolutions are passed with a simple majority, however, the articles can stipulate that certain decisions must

be agreed at a higher percent or unanimously. In practice, resolutions can be passed very informally so long as all directors are of a common view.

As the shareholders are not involved in the day-to-day business of the company, once they have granted a certain power to the directors, they cannot then retrospectively overrule their decisions. There are, however, some decisions which directors are not able to take without the consent of the shareholders, such as engaging the company in substantial property transactions.

Powers can be delegated to individual directors or a committee for practical purposes. For example, the day-to-day decisions of the company may be delegated to a chief executive while the more important decisions are reserved for board approval.

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When acting on a daily basis, the directors must:

- promote the success of the company, taking into consideration long term goals, the interests of employees, business relationships, moral impact, reputation and the shareholders;
- act independently, avoid conflicts of interest and not accept benefits from third parties in relation to their actions as a director;
- exercise reasonable care, skill and diligence.

Should a director fail to exercise reasonable care, skill and diligence, the company will have the right to sue that director for damages. For all other breaches, a company may require the director to account for any lost profits, return company property or compensate the company. The company may also rescind a contract or apply for an injunction against the director.

Non-executive, shadow and de facto directors

It is important to note that while an individual can become a director without engaging in the day-to-day running of the business, they can still be liable to the company and have the same duties as an executive director. This type of director is known as non-executive (NED) and is not an employee of the company. An NED's main role is to attend and vote at meetings and will be paid in directors' fees.

A shadow director is not an official director but gives instructions to the directors of the company. They do not have all of the responsibilities of a director, but they do, for example, need shareholder approval for a contract with the company in which they have an interest.

A de facto director is similar to a shadow director and the two roles often overlap. However, a de facto director performs the functions of the director despite never being appointed and can be held to have the same duties to the company as an appointed director.

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