

1. Do I need any special skills or qualifications to be a director?

There is no legal requirement for any qualifications except in certain specific businesses (eg investment companies).

At the moment almost anyone can be a director, including both individuals and (for the time being - although the government plans to abolish corporate directors, see below) other limited companies. Exceptions include the company's auditor, people who have been officially disqualified from acting as a director in the UK and elsewhere, undischarged bankrupts (who would need permission from the court) and anyone under the age of 16 (although an under-age individual can still acquire liabilities if they act as a director or as a shadow director - see 19 - before they are 16).

There is also an obligation for every company to have at least one natural person serving as a director.

In due course the government proposes to abolish corporate directors - the rule allowing one limited company to be a director of another - although it says there will be certain exceptions when a limited company may continue to be a director of another. Take legal advice about the ramifications for you if you want to have (or already have) a limited company director on your board.

2. What are my responsibilities to the shareholders?

Generally, a director is required to comply with certain legal duties when acting as a director, and these duties are owed to the company rather than the shareholders. Statutory directors' duties were introduced under the Companies Act 2006. These are similar to the previous duties but, if you haven't already done so, it is worth taking legal advice to ensure none of your current practices, policies and procedures could lead to breaches. The duties are:

- To promote the long-term success of the company (rather than the interests of, say, the majority shareholder).
- To act within the company's constitution and powers, ie only do things the company is authorised to do, and that they, the directors, have power to do (rather than the shareholders).
- To exercise independent judgement (ie not take instructions from a third party or, for that matter, a dominant director, on how to run the company).
- To exercise reasonable skill, care and diligence.
- To avoid 'situational' conflicts of interest, ie any situation in which the director's interests do or may conflict, directly or indirectly, with the company's. This includes where a director exploits any of the company's property, information or opportunities.
- Not to accept benefits from third parties that are offered because they are a director (or because they did, or omitted to do something as a director).
- To declare any direct or indirect personal interest in any proposed transaction or arrangement to be entered into by the company (a 'transactional' conflict) to other members of the board, either at a board meeting or in writing.

The government has said that, for a trading company, 'success' will usually mean 'long-term increase in value'. It has also said, however, that it is for the directors to decide what constitutes success for their particular company and that the courts, in any action against a director for breach of duty,

should be reluctant to substitute their judgement for that of the directors. The Companies Act specifies a (non-exhaustive) list of factors the directors must take into account in order to show that they are promoting the success of the company, including:

- the likely consequences of any decision in the long term
- the interests of the company's employees
- the need to foster the company's business relationships with suppliers, customers and others
- the impact of the company's operations on the community and the environment
- the desirability of the company maintaining a reputation for high standards of business conduct
- the need to act fairly as between members of the company

Directors should also consider whether, given their company's circumstances, additional or alternative factors should also be taken into account. In deciding which factors to take into account, the weight to be given to each, and the actions they should take in consequence, the directors must exercise due skill, care and diligence.

The shareholders can relieve the directors of many of their duties, in the articles of association, by authorising them to carry out certain acts that would otherwise be a breach. In the case of situational conflicts of interest, other independent members of the board (ie those who are not personally interested, or connected to someone who is) can authorise a breach unless the articles prohibit this.

3. Am I responsible to anyone other than the shareholders?

Yes. You must promote the long-term success of the company as a whole, which involves taking into account more than just the interests of the current shareholders. For example, if the company faced a cash shortage, it might be inappropriate to declare a large dividend even if the shareholders wanted you to.

As well as the shareholders, you must consider the interests of other 'stakeholders' such as creditors and employees.

You also have a responsibility for ensuring that the company complies with all relevant legislation (see [15](#)).

4. Can I have private dealings with a company I am a director of?

Only if permitted by the company's articles of association and having disclosed all material facts to the board so that the arrangements may, if required by law, be formally approved (see [5](#)).

The company can usually loan money to you, provided the loan is approved by the shareholders.

Any substantial private deal between you (or a person connected with you) and your company must be approved by the shareholders, eg if you sell substantial assets (worth more than £100,000 or 10% of the company's net assets, whichever is lower) to the company, or it sells substantial assets to you (or, in each case, someone connected with you). The definition of the people who are connected with you is wide - take advice.

5. What should I do if I think I have a conflict of interest?

There are two types of director's conflicts of interest - 'situational' conflicts and 'transactional' conflicts (see [2](#)). An example of a transactional conflict would be if you (or a member of your family) own shares in another company with which your company is doing, or planning to do, business - ie the conflict arises because of a transaction the company is to enter into. An example of a situational conflict would be if you were in a situation (or could get into a situation) where you could exploit company property or information, or hijack a company opportunity, for personal gain. In that case, the company itself is not entering into any sort of transaction - it is the situation you are in that is creating the conflict.

Situational conflicts are only allowed if:

- the articles of association authorise them; or
- they are authorised by a majority of the independent members of the board of directors (ie those with no direct or indirect interest in the matter). The conflicts must have been proposed to the board and, for a private company, the company's constitution must not prohibit this. Private companies formed before October 2008 also need a resolution of the shareholders allowing the directors to authorise situational conflicts - take advice if in doubt. (For a public company there must be express authority in the articles.)

Transactional conflicts are allowed, but you are legally obliged to declare any transactional conflict of interest to your fellow directors. It is a breach of your duties as a director if you fail to declare any personal interest you have (whether direct or through someone else) in any *proposed* transaction or arrangement to be entered into by the company, and whether or not you are a party to it. The declaration can be given by written notice, by a declaration at a board meeting, or by a general notice to the company that you are to be treated as interested in any future transactions or arrangements with named third parties.

Also, unless you have already declared your interest in it when it was a *proposed* transaction or arrangement, you must declare to the directors any personal interest in any *existing* transaction or arrangement your company has already entered into. You must do this either at a board meeting or by general notice. Failure to declare your interest in an existing transaction is not a breach of duty, but it is a breach of the Companies Act, making you liable to a fine.

Generally, you must not use your position to make private profits at the company's expense, for example, by accepting benefits offered to you by a third party because you are a director.

You may not be allowed to vote on any decision where you have a potential conflict of interest - although your company's articles of association may permit you to, provided you have declared your interest. If you do have a conflict, then your decisions as a director must not be influenced by your personal interests. Your duty is to put your company's interests first.

One circumstance where you are very likely to have a conflict of interest is where someone offers you a benefit because you are a director, or because of something you do (or do not do) as a director. The most obvious example would be a bribe. Accepting benefits in these circumstances is a breach of duty (this will also trigger the requirement to declare an interest, just discussed). However, there is an exception if the benefit is authorised by the articles of association (or by the members in some other way), or if the acceptance of the benefit is unlikely to give rise to a conflict of interest.

6. Are there any special rules about holding shares in a company I am a director of?

Not usually, though the articles of association or a shareholder's agreement may say you have to sell your shares in certain instances - for example, if you leave the company. You should therefore check the company's articles or any shareholder's agreement before buying any shares.

A director who holds or controls shares in the company, whether directly or indirectly, may be a Person with Significant Control, (PSC) so that they must be entered in the company's PSC register- see 11 in our Company Administration FAQs.

Insider dealing - where you make share profits using information which you are aware of because of your position as a director, but which is not publicly available - is illegal.

If an individual director holds or controls more than 25% of the company's shares or voting rights (whether in their own name or indirectly - for example, by holding them through a limited company or other legal entity) that individual may be a Person with Significant Control (PSC). If so, the company must enter information about them (or any legal entity they hold a majority stake in and are using to hold or control shares indirectly) in the company's public PSC register. The same applies if the individual is legally entitled (directly or indirectly) to appoint or remove a majority of the board of directors of the company or has the right to exercise or actually exercises 'significant influence or control' over the company (the government has issued statutory guidance on what this means). A director may also be a PSC if they exercise (or have the right to exercise) significant control over the activities of a trust or firm that would be a PSC if it were an individual.

7. Are there any special rules about my contract of employment?

Your contract of employment should be approved by the board of directors. If your company grants you a term of employment that guarantees you at least two years of employment (including where a contract for less than two years gives you the option to extend it beyond two years), then it must also be approved by the shareholders. There are special rules as to the notice period to be given to shareholders before approval is given - take advice.

Also, a copy of your contract must always be available for inspection by members.

8. What returns do we have to make to Companies House?

From 30 June 2016 you are legally required to check and confirm to Companies House, at least once every year, that the information it holds about your company is correct. You do this by filing a 'confirmation statement'. This replaces the previous annual return. If the information Companies House is holding is not accurate you must tell it what changes are needed. There is a fee to pay with the confirmation statement - although you can update your company's public record as many times as you need to, but you'll only be charged once a year.

You are also required to file a copy of your annual report and accounts at Companies House each year. Private company reports and accounts must be filed within nine months. Company reports and accounts for public companies must be submitted within six months.

There are automatic civil penalties for late filing of annual accounts at Companies House, depending on how late they are. These are doubled for persistent failure to file annual accounts on time.

Other filings which you must make with Companies House include:

- changes to the articles of association, and some shareholder resolutions

- changes to directors or their details
- changes to the registered office address
- if the company has one, changes to the company secretary or their details (company secretaries are optional for private companies)
- any change to the company's accounting reference date (ie your year end)
- any issue of shares or changes to the company's share structure
- if the company grants a mortgage or charge over an asset

Many companies outsource to a specialist service, or their professional advisers, to ensure that the correct documents are filed, on time. Failing to file particulars of a mortgage or charge within 21 days after it is created can mean it is unenforceable and the money borrowed has to be paid back to the lender.

9. Can we delegate responsibility for filings to the company secretary?

You can, if you have one, but ultimate responsibility will still remain with the company and its directors, as well as the company secretary. The same applies if you delegate these tasks to a third party such as a provider of company secretarial services.

Private companies can decide not to have a company secretary. In companies without a company secretary, responsibility for, eg record-keeping and filing at Companies House will fall solely on the directors even if, in fact, they assign an employee to look after administrative matters. Most companies continue to have a secretary.

10. Do I need to read the company's articles of association or any other documents?

Yes. The company's articles of association set out the constitution of the company, which can include:

- restrictions on the 'objects' of the company, ie requiring the company to pursue a particular type of business
- limitations on the powers directors have, such as borrowing money
- rules on the numbers of directors, how they are appointed, and how decisions are taken
- details of any decisions which must be agreed by shareholders

It is therefore essential that you know what the articles contain, so that you can ensure that you act within them.

As far as other documents are concerned, you will want to be aware of everything which can help you fulfil your role as a director effectively. Documents you should always see include:

- annual report and accounts
- management accounts
- strategy documents
- key policy documents (such as health and safety)
- minutes of board meetings

- information on key products, services, personnel and so on

11. Does it matter if I don't get to see management accounts and other information?

Yes. Without the right information, it will be difficult for you to fulfil your responsibilities as a director, and therefore protect yourself from claims. Your responsibilities include the requirement to exercise an acceptable degree of care in your actions as a director.

In many companies, individual directors take primary responsibility for particular areas, such as the finance director for financial matters. Even so, every director would normally expect to see management accounts and any other important information regarding the overall position of the company. If the company gets into financial trouble, so that directors' actions are scrutinised by a liquidator or administrator, each director, whether financially literate or not, will be expected to have given their attention to the accounts, queried any aspect that they did not understand and pressed for appropriate remedial action.

12. What is my responsibility for the company's accounts?

Accounts for financial years beginning on or after 1 January 2016 (or on or after 1 January 2015 if a company has chooses to adopt these thresholds earlier) are exempt from audit for private companies which meet two out of the following criteria in a year:

- not more than 50 employees;
- a turnover below £10.2 million;
- net assets (ie a balance sheet total) amounting to less than £5.1 million

Micro-businesses - those with not more than ten employees, turnover of not more than £632,000 and/or a balance sheet of not more than £316,000 - are only required to produce a simple balance sheet and profit and loss account.

The annual accounts must be presented for board approval, and the balance sheet signed by a director. The board must also approve and sign off the directors' report. All businesses - except the smallest (as detailed above) - must also produce a strategic report which includes a business review (previously part of the directors' report). Quoted companies are also required to report on: the numbers of men and women employed within the business; their strategy and business model; their greenhouse gas emissions; human rights issues and policies and the efficacy of those policies.

Full financial statements must be circulated to the shareholders. The directors are also legally responsible for filing the accounts with Companies House (see [8](#)).

13. What board meetings do we need to have?

You need a board meeting whenever you need to take a decision which requires board approval. To some extent, this will depend on the company's articles of association and how much authority has been delegated by the board to other personnel. You must also hold a board meeting if any director asks for one.

In practice, you will need at least one board meeting annually to approve the annual accounts. As a director, you also need to ensure that the number of board meetings you have (and the matters on the agenda and the way the meeting is conducted), show you are complying with your duties as a director - for example, that each of you is promoting the long-term success of the company and

exercising independent judgement. Most companies hold regular board meetings - quarterly or monthly - to review management accounts, discuss strategy and so on.

Of course, these meetings can be supplemented by informal meetings of some or all of the directors for discussions where formal board approval is not required.

If you cannot physically attend a board meeting, then some articles of association allow directors to take part by telephone or videoconference, for an 'alternate' to attend in their place, or for decisions to be made by every director signing an identical 'written resolution in lieu of a meeting' rather than attending a meeting.

14. What shareholder meetings do we need to have?

You will need to hold a shareholders' meeting (called a 'general meeting' in the Companies Act) if you wish to take any decisions which require the approval of the shareholders. This might include such things as removing a director or changing the company's articles of association.

In addition, shareholders with at least 5% of the company's voting shares can require the board to call a general meeting for a specific purpose.

Shareholders can also pass decisions by 'written resolution in lieu of a meeting', provided they do so in accordance with the rules set out in the Companies Act 2006.

15. Apart from company law, do I have any other legal obligations?

Yes, there are circumstances in which you can be held personally responsible for business decisions which are effectively unlawful, for example under the Health & Safety at Work Act.

The board must ensure that the company complies with all legislation and regulations relevant to its business. You should ensure that at least one of the directors is familiar with each of the following areas of the law:

- employment
- health & safety
- insurance obligations
- tax

16. What are the possible penalties for failing to exercise my responsibilities as a director?

You could be held personally liable for losses resulting from illegal acts, acting beyond your powers, or failing to use sufficient skill and care.

You could become personally liable for company debts if you allow the company to trade while it is (or is likely to become) insolvent. If the company has difficulty meeting its financial obligations the directors should seek advice from an insolvency practitioner.

Some types of conduct can lead to disqualification from being a director. You might also be fined or face criminal prosecution - for example, for failing to keep proper accounting records, for fraudulent behaviour, or for serious health and safety shortcomings.

You are not generally responsible for the actions of other directors if you knew nothing about them and took no part. However, a court case in 2009 confirmed that where a director of a company was able to commit fraud because of the inactivity of other directors, those directors were also in breach

of their duties to their company. In that case a dominant managing director had taken nearly £60m from his company, misapplying three of the company's bank accounts, and creating fictitious director's loans and false bank facility letters. The court said that, by failing to ask questions of the managing director regarding his actions, the other two directors were themselves in breach of their duties to their company. Directors must therefore keep themselves informed about what is going on in the business, and participate in its management, which means they should not sit by and let other directors act without being prepared to challenge them, no matter how dominant those other directors are.

You are also expected to keep yourself informed about what is going on in your company, whether or not it is in an area that is your primary responsibility. It is therefore very dangerous for directors to turn a blind eye to, or fail to pay attention to, anything going on in their company - particularly in relation to the company's financial situation. Directors can be held jointly and severally liable if they act in breach of their responsibilities.

17. How can I protect myself from potential legal action?

You need to understand your role within the company and the law relevant to that area, and to take an active approach to fulfilling your responsibilities. Never sit idly by, assuming that other directors can safely be left to manage the company's business (see [16](#)). For example, you should insist on regular financial reports as to the company's situation and projections, and apply your mind to them when you receive them.

If you are not happy with the way the company is being run, you may wish to require a board meeting to discuss your concerns. Where you disagree with a decision, it is always a good idea to ensure that this is noted in the minutes of the meeting, together with your reasons. This can be particularly important if the company's financial situation is poor. If the company subsequently becomes unable to pay its debts, a liquidator or administrator must submit a report on the conduct of each director, which could lead to disqualification as a director and, in some instances, personal liability. You may even wish to keep a private record of events and decisions, and your part in them.

If you are concerned that things are not as they should be, take legal advice personally.

You may also want to consider whether it is worth having directors' and officers' liability insurance. Although this cannot protect you from legal action, it can, in certain circumstances, cover the costs of legal advice and damages awarded against you by a court. Cover is often limited, and premiums can be expensive, but it can, in certain circumstances and provided the articles of association give the necessary authority, be paid for by the company. Take advice.

18. Does a non-executive director have the same responsibilities?

In general, yes. In practice, you might not be required to show the same degree of care and skill as, for example, a qualified accountant who acts as the finance director. It would, however, be very dangerous to rely on this as a defence.

19. Can I be held liable if I haven't been officially appointed as a director?

Yes.

If you are a 'de facto' director - ie you act as a director even though you have not been officially appointed - you could be held liable. The same can also be true if you are a 'shadow' director - ie you are not on the board, but you still exert influence over the directors.

Like anyone else, you could also be held liable for your acts as an individual: for example, discriminatory behaviour.

20. Can I be held liable if I have resigned as a director?

If you continue to exert influence over the board (in which case you may be treated by the courts as a 'shadow director') after your resignation, you can still be liable.

Also, resigning as a director does not allow you to walk away from problems that occurred while you were a director - you retain responsibility for things you did (and sometimes things that you did not do), or that happened, on your 'watch'. For example, if the company subsequently becomes insolvent, the official receiver (or administrator, etc) will look into the conduct of the directors over the previous three years.

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The above gives a general view of Directors responsibilities