



Legal Brief

Statutory duties of directors – no hiding place!

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by **Lynda Lawson, corporate lawyer**, direct line 01256 854627, email llawson@phillips-law.co.uk

However big or small your company, if you are a director you must ensure that you comply with the duties required of you. As a director you have no hiding place, you must act in the best interests of the company at all times, because ignorance and hindsight are no defence and the consequences can be severe.

So what should you know and what are your responsibilities?

Directors have always had responsibility for the day to day running of their company and the management of its business, which should be carried out with reasonable care and skill. The Companies Act 2006, which has been coming into force in stages, sets out these duties in statute. The Department for Business, Enterprise and Regulatory Reform has published guidelines on their meaning to assist directors in understanding their duties.

In simple terms the guidance is as follows:

- Act in the company's best interests, taking everything you think is relevant into account
- Obey the company's constitution and decisions taken under it
- Be honest and remember that the company's property belongs to it and not to you or to its shareholders
- Be diligent, careful and well informed about the company's affairs. If you have any special skills or experience, use them
- Make sure that the company keeps records of your decisions
- Remember that you remain responsible for the work you give to others
- Avoid situations where your interests conflict with those of the company. When in doubt disclose potential conflicts quickly
- Seek external advice where necessary, particularly if the company is in financial difficulty

A key change is that shareholders will be able to bring claims against directors for alleged negligence if the company fails to pursue claims against them. However, any claim must still be brought in the name of the company so shareholders will benefit only indirectly. There are also safeguards against frivolous claims so it may be that this will not greatly increase the risk to directors.

Lynda Lawson, a business lawyer at Phillips Solicitors, comments: 'The vast majority of company directors currently work very hard to ensure that they put the interests of their companies before their personal interests and the new codified duties will not require them to shift this focus.'

If you would like to speak to Lynda about the new duties, a review of your Articles or any other matter relating to your business needs, please call her on 01256 854627 or e-mail her at llawson@phillips-law.co.uk.