

Directors

Their duties and powers

A quick guide



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement



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About this guide

We have produced this quick guide to explain some of the legal duties of company directors under the Companies Act.

What is a company director?

A company director is someone appointed, usually by the members (owners) of a company, to manage and run the company on their behalf. Directors have duties under both company law and the company's constitution.

Do companies have to appoint directors?

Yes, by law all companies must appoint company directors. A private limited company (LTD) must appoint at least one director. Other types of companies must appoint at least two directors.

Who can be a company director?

Almost anyone can become a company director provided they are 18 years of age or older. No particular qualifications or experience is needed. When directors are appointed, they must sign a statement accepting that they have legal duties and obligations.

Who cannot be a company director?

To protect the public, some people cannot become company directors. They include:

- an **undischarged bankrupt** – this is someone who has filed for bankruptcy but has not received permission from the court to stop making payments on their debts;
- a **disqualified person** – this is someone that a court has found guilty of fraud or serious misconduct and has disqualified from acting as a director for a certain time; and
- a **restricted person** – this is a person who fails to satisfy the court that they acted honestly and responsibly in relation to an insolvent company. This person can only act as a director in a company in which the members have invested a significant amount of money in the capital of the company.

Are there different types of director?

There are five types of company director:

- **Executive directors** are involved in day to day managing the company. Examples include a managing director or sales director.
- **Non-executive directors** are not involved in managing the company. They are usually knowledgeable and experienced people who are appointed to the board of directors to give independent advice. Companies do not have to appoint non-executive directors.
- **Alternate director** is a person who is appointed to attend board meetings on behalf of the directors to act for them in their absence.

- **De facto directors** perform the duties of a director even though they are not formally appointed by the company. They take on the role themselves.
- **Shadow directors** are not formally appointed as directors but give instructions that are usually followed by the company's directors.

All company directors have the same legal duties under the Companies Act.

What are the legal duties of directors?

Directors look after the company's assets (that is, the company's possessions, property and money).

Their duties fall into two categories:

- common law duties, originally created by the courts; and
- statutory duties laid down in the Companies Act.

Common law duties

- Directors must act in good faith and in the company's interest.
- Directors must act honestly and responsibly in relation to the company.
- Directors must act in line with the company's constitution and the law.
- Directors must not use their powers for personal gain or for the benefit of others at the company's expense. For example, directors should pay the same as everyone else (the market value) for company assets.

- Directors must act with due care, skill and diligence. For example, they should meet regularly to review the company's finances and take action to correct any problems.

Statutory duties

Disclosing personal information

When they are appointed, directors must give the company:

- their name, address, date of birth, nationality and occupation;
- details of any shares or loans they have with the company or a related company that they own or in which they have an interest; and
- details of any other companies of which they are a director. They must also keep the company up to date on any changes to this information.

Disclosing personal interests

Directors must tell the company of any interest they have in a contract or proposed contract with the company.

Keeping financial records

- Directors must make sure that the company keeps adequate accounting records that explain all payments to or from the company or its customers and suppliers, and that accurately identify its assets and liabilities (what it owes).
- Directors must prepare financial statements that give 'a true and fair view' of the company's affairs.

Arranging audits

Directors must have the financial statements audited unless the company is a small company and is not required to have an audit. An audit is a review of the company's financial statements by an independent expert.

Reporting to members

Directors must prepare a report each financial year for the members (owners) of the company. This should include details of:

- how the company is doing;
- how its business has developed during the year;
- any important events that affected the company during the year; and
- any risks or developments that might affect the company in the coming year.

Holding meetings

Directors must arrange an annual general meeting (AGM) each year. They must arrange for notice of the meeting to be sent to members at least 21 days before the meeting. The notice should:

- state the date, time and place of the meeting;
- include what will be discussed at the meeting (the agenda); and
- include other relevant documents such as financial statements, the directors' report and the auditor's report (if any).

Sometimes, directors may have to call an extraordinary general meeting (EGM) of the members to deal with special or urgent business.

Keeping records of meetings

Directors must arrange to keep minutes of what is said and decided at general meetings and at meetings of the board of directors and its sub-committees.

Keeping registers

Directors must make sure that the company keeps certain documents up to date. These include the:

- register of members;
- register of directors and company secretary;
- register of any shares or financial interests that the directors and company secretary have in the company; and
- directors' service contracts.

Filing obligations

Directors must make sure that the company sends certain documents and information to the Companies Registration Office (CRO) by the relevant deadline. These include:

- the company's annual return and associated financial statements;
- notice of a change of registered office, director, company secretary and their details;
- details of any mortgage or charge on the company's property; and
- details of the satisfaction (repayment) of a charge or mortgage on the company's property.

Are directors liable for company debts?

Directors can be penalised if a court finds that they or the company have breached (disobeyed) the Companies Act. For example, where a restricted person continues as a director in a company that is not adequately capitalised and, the company subsequently goes into liquidation, the court can make that person liable (responsible) for the company's debts without any limitation.

What powers do directors have?

In general, directors may do anything that is legal and is allowed by the company's constitution.

What powers do members have?

The members (owners) can make some decisions such as whether to appoint or reappoint the company's auditor. The directors cannot make these decisions on their own.

What else should directors know?

Transactions between company and directors

In general, directors cannot use company assets for their own benefit. However, there are some exceptions.

- A company may give loans to directors and people or organisations connected by family or business to the directors if the total loan does not exceed 10% of the company's 'relevant assets'. Relevant assets means the net assets of the company listed in the accounts presented to members at the last AGM.

- A company may give loans (10% or over) to directors and people or organisations connected by family or business to the directors if the directors sign a document saying that they believe the company will be able to pay its debts after the loan is given. However, they may be personally liable for the company's debts if a court decides there was no good reason for them to believe this.
- In certain circumstances a company may engage in a property sale or purchase with a director or people or organisations connected by family or business to the directors. However, the directors must justify the proposed transaction to the members and a majority of the members must approve it at a general meeting before the transaction can take place.

Solvent liquidation

If a company is wound up but can pay all its debts, this is known as a solvent liquidation. The directors must send a copy of the declaration of solvency to the Registrar of Companies.

The declaration should state that the directors have made a full inquiry into the affairs of the company and they believe that the company will be able to pay its debts in full for the next 12 months.

Trading difficulties

If a company finds itself in financial difficulty, it should get independent advice as early as possible. This advice will clarify the options, for example, if it is possible to save the company (by re-financing or restructuring) or, if it should be wound up and liquidated.

Reckless trading

If directors help to create a company debt knowing that the company will not be able to pay the creditor, a court may order them to pay some or all of the company's debts themselves.

Insolvent liquidation

If a company does not have enough money to pay its debts and is wound up, this is known as an insolvent liquidation. The directors must prepare a statement of the company's assets and liabilities and co-operate with the liquidator.

Struck-off insolvent companies

If the directors do not arrange for the liquidation of a company that owes a large debt and the company is later struck off the Register of Companies for failing to file its annual returns, a court may disqualify the directors from acting as directors of any company.

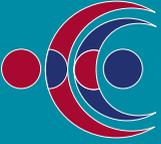
Where can I get more information?

You can find more detailed information about directors on our website, www.odce.ie.

If you are unsure about company directors and what you need to do under the law, you should get independent professional advice.

Disclaimer

This Quick Guide sets out some of the basic legal duties of company directors. It is not a legal interpretation of any part of the Companies Act. The Director of Corporate Enforcement accepts no responsibility or liability for any errors, inaccuracies or omissions in this guide.



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*Tá leagan Gaeilge den leabhrán seo ar fáil
An Irish version of this booklet is available*