A director’s duties

What are the responsibilities of a director, and what are the consequences if these duties are not met?

Running a practice as a company offers many benefits, including easier fundraising, protection of personal assets and the potential for greater tax savings. But holding a directorship that comes with running a company involves a number of duties and obligations. The law is very prescriptive about this, and for good reason.

In exchange for limited liability and general immunity for company debts, directors must care for the success of the business and, should insolvency loom, protect the position of creditors.

The authorities take a dim view of those that breach the law. Take the January 2017 case of Nathan Brown and Carole Brown, the directors of C&N Shearing (Shearing), a Lancaster animal husbandry and livestock business, who failed to maintain or deliver the company’s accounts. The company entered administration on 12 February 2015 with assets of £32,243 and liabilities of £751,727. An investigation found it was not possible to determine Shearing’s income and expenditure during its final trading period or establish that all money paid out was for the benefit of the company. It was also not possible to determine what stock belonged to the company, what book debts were due to the company, verify what happened to assets valued at £123,440 in the 2013 annual accounts or verify how much was owed to creditors. Carole Brown was disqualified as a company director from 27 December 2016 to 2022 while Nathan Brown was disqualified from 2 January 2017 to 2023.

And then there was the case of Norfolk Farm Vets v Molly McKay, which involved “various serious and wide-ranging allegations of breaches of fiduciary duty against a director of the applicant company”. The company has since been dissolved.

Responsibilities

According to Peter Windatt, an accountant and licensed insolvency practitioner with BRI Business Recovery and Insolvency, companies must have at least one director who is legally responsible for running the company and making sure its accounts and reports are properly prepared. Directors must be at least 16 and not disqualified; while most have a director’s title, the law recognises what is termed a shadow director. “An individual in this situation,” says Windatt, “is without title but nevertheless acts as if they are a director. Consequently, the law assigns them the duties and obligations of a formally titled director. Avoiding the term ‘director’ doesn’t remove the duties and liabilities from an individual.”

There are many general statutory duties placed on directors by the law, which Windatt outlines: “Firstly, directors must act within their powers – that is, comply with the company’s constitution and exercise powers only for the reasons they were given.”

Windatt explains that directors must critically act in a way they consider is most likely to promote the success of the company for the benefit of its members: “To do this they must have regard to all relevant matters, which the law specifically says involves ‘considering 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, as well as the impact of the company’s operations on the community and the environment; and the desirability of the company maintaining a reputation for high standard business conduct; and the need to act fairly as between members of the company’.”

But there are other obligations to note: directors must exercise independent judgement, that is, not be swayed by others, and must also exercise reasonable care, skill and diligence. This is key for Windatt – he says directors must be diligent, careful and well informed about the company’s affairs: “If a director has particular knowledge, skills or experience relevant to his function (for instance, they are a qualified accountant and act as a finance director), they will

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