

ARTICLE ON DUTIES, RESPONSIBILITIES AND LIABILITIES OF DIRECTORS

INTRODUCTION

Though a company is a legal entity in the eyes of the law, it cannot act as a natural person. It must act through a human agency and the control of its management and exercise of its powers must necessarily be delegated. The persons to whom the delegation is made are referred to as 'directors' which expression is simply used to denote the Board of Directors of the company acting as a body. Sec 253 of the Companies' Act provides that no body corporate, association or firm shall be appointed director of any company, and only an individual shall be so appointed.

The directors are the people who are responsible for the management of the company; they hold a position of trust towards the company and are accountable to the shareholders for the performance of the company.

Under the Companies' Act, directors are accountable for their acts done on behalf of the company. Directors owe duties of honesty and loyalty to the company (fiduciary duties) and a duty of care.

Basically, the duties of Directors are of two types:

1. **General Duties:** These are mainly duties that fall under the broad category of "care and skill". As an agent, the director is has the duty to exercise care and skill when acting as a director of the company.
2. **Fiduciary duties:** Duties based on good faith owed by a fiduciary or a trustee who must not abuse his position for personal gain.

Besides the statutory duties which the directors have to perform to ensure strict compliance with the various provisions of the Act, they also have certain duties which arise out of their fiduciary relationship with the company.

STATUTORY DUTIES

1. Maintenance of books and registers prescribed by the Companies' Act.
2. Filing of returns and documents with the Registrar of Companies, Company Law Board, Central Government and High Court.
3. Seeking approval from the Registrar of Companies, Company Law Board and Central Government.
4. Directors must convene the different kinds of shareholders' meetings provided for in the Companies' Act, within their stipulated periods.
5. Directors must approve the balance sheet and profit and loss account of the company before it is signed on their behalf.
6. In cases of winding-up or liquidation, the directors must ensure that the books of account of the company are completed and audited up to the date of the winding-up order issued by the Company Court.
7. Directors, who are concerned or interested in a proposed contract or arrangement with the company in any way, must disclose the nature of their concern or interest to the Board.
8. Directors are under an obligation to attend the Board meetings as prescribed by the Articles, or such as may be called by the chairman (if any) of the Board, otherwise any absenteeism for three (3) consecutive meetings or for a period of three (3) months, whichever is longer, without obtaining leave of absence, will result in the director or directors vacating their respective offices.

FIDUCIARY DUTIES

1. **Duty to act in the best interests of the company:** One of the main fiduciary duties is that he should act honestly and in good faith in the interests of the company as a whole.
2. **Duty not to exercise powers for a collateral purpose:** It is his duty not to exercise his powers for any collateral purpose (or mainly for collateral purposes, if there is more than one purpose). He must exercise those powers for proper purposes.
3. **Duty not to compete:** There is no definite legal prohibition on a person acting as a Director of two directly-competing companies. However, the duties of confidentiality and acting in the best interests of a company would make it very difficult indeed for a director to do justice to the Boards of two directly-competing companies.
4. **Duty of Confidentiality:** A director has the duty to ensure that any confidential information is not directly or indirectly divulged. A director must not disclose or make use of that confidential information for any purpose, other than for the benefit of the company.
5. **Duty to disclose interests:** A director has the statutory duty to disclose any personal interest which he has in relation to any business or transaction being carried on or proposed to be carried on by the company.
6. **Duty not to make secret profits:** As part of a director's fiduciary duties, he must not make secret profits out of his position.
7. **Duty not to misapply company's assets:** Whilst the directors do not have legal ownership of the company's assets, they do have effective control of them and they must use them and employ them for the proper purposes of the company and in the best interests of the company.

GENERAL DUTIES

1. **Duty of care and skill:** When acting on the company's behalf, directors are expected to exercise care and skill. Directors must not be negligent in the discharge of their duties.
2. **Duty as an executive Director:** One or more of the Directors may have executive responsibilities and they are required to devote all or a substantial part of their time to the business of the company.
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3. **Reliance on co- directors and officers:** A director is entitled to rely on his fellow directors and officers of the company. A director may also rely on the opinions of an outside expert and in fact may be negligent if they do not obtain such an opinion in appropriate circumstances.
4. **Delegation: Responsibility for the acts of others:** The Articles of Association usually permit directors to delegate powers to particular directors or to a committee of directors. A director can be liable to the company if he himself is negligent. He can also be liable if he himself deliberately indulges in a wrongful act harmful to the company.
5. **Duty as to overall supervision and control:** The overall management is entrusted to all the directors jointly and they must, therefore, exercise some degree of supervision over the executive directors and other directors to whom the powers are delegated. In order to enable themselves to play an effective role and discharge their duties diligently and with persevering attention, the directors must ensure that they are kept abreast of the workings of the company.
6. **Duty not to exceed powers:** The Board is subject to limitations on its powers laid down in the Articles of Association. It is the duty of the directors to ensure that not only do they keep within the company's powers but also that they keep within the powers actually given to them. If the directors exceed their powers, then the company is entitled to recover from them any loss suffered by the company.
7. **Duty to employees:** Directors are required to take serious responsibility for the performance of their functions, not only to with regard to the interests of the shareholders, but also to the interests of the company's employees in general.
8. **Duty to Creditors:** Directors are not personally liable to the company's creditors to pay off their dues owed by the company. They can be made personally liable if they conduct the business with intent to defraud creditors.

9. **Duty to consumers:** A company has to have regard to consumers in relation to the goods and services it supplies to ensure that they are of an appropriate standard. Directors must ensure that they have an effective system of redressal of consumers' grievances.

LIABILITES OF DIRECTORS

1. Liability to the company:

(A) **Breach of fiduciary duty:** Where a director acts dishonestly against the interests of the company, he will be held liable for breach of fiduciary duty. Most of the powers of directors are powers in trust and, therefore, should be exercised in the interest of the company and not in the interest of the directors or any section of its members.

(B) **Ultra vires acts:** Directors are supposed to act within the parameters of the provisions of the Companies Act, Memorandum and Articles of Association, since these lay down the limits to the activities of the company and, consequently, to the powers of the Board of directors. The directors shall be held personally liable for acts beyond the aforesaid limits, being ultra vires of the company or the directors.

(C) **Negligence:** As long as the directors act within their powers with reasonable skill and care as expected of them as prudent businessmen, they discharge their duties to the company. But where they fail to exercise reasonable care, skill and diligence, they shall be deemed to have acted negligently in discharge of their duties and, consequently, shall be liable for any loss or damage resulting there from.

(D) **Mala fide acts:** Directors are the trustees of the moneys and property of the company handled by them, as well as the exercise of the powers vested in them. If they act dishonestly or in a mala fide manner, or do not exercise their powers and perform their duties in the interest of the company, they will be liable for breach of trust and may be required to make good the loss or damage suffered by the company by reason of such mala fide acts.

2. Liability to third parties:

Liability under the Companies' Act:

(A) **Prospectus:** Failure to state any particulars as per the requirement of Section 56 and Schedule II of the Act or a misstatement of facts in the prospectus renders a director personally liable for damages to the third party.

(B) **With regard to allotment:** Directors may also incur personal liability for: Irregular allotment, i.e. allotment before minimum subscription is received (Section 69), or without filing a copy of the statement in lieu of the prospectus (Section 70) - [Section 71(3)]. Under Section 71(3), if any director of a company knowingly contravenes or wilfully authorises or permits the contravention of any of the provisions of Section 69 or 70 with respect to all allotments, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby.

(C) The liability of any or all of the directors of a limited company can be unlimited if so provided by the Memorandum, or can be so done if approved by a special resolution as authorised by the Articles.

(D) A director may be held personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company, if he or she was knowingly party to the fraudulent carrying-on of business. Further, Section 542(3) provides that every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

