

DIRECTORS' DUTIES (PRIVATE COMPANIES)

THE MEANING OF DIRECTOR

- **Executive directors** are involved in the day to day running of the business.
- **Non-executive directors** usually only attend board meetings and their role is to bring an independent and objective view to board meetings.
- **Shadow directors** are persons who are not appointed directors but on whose instructions the board normally acts. This does not include professional advisers.
- **De facto directors** are persons who are not properly appointed directors but assume the status and functions of a director.

There is no distinction made between the legal duties of executive and non-executive directors. Non-executive directors must be as diligent and keep themselves as informed about the company's financial affairs as executive directors.

GENERAL AND FIDUCIARY DUTIES

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- administrative duties under company legislation e.g. filing returns and accounts at Companies House; keeping statutory registers up to date. Directors who knowingly or recklessly deliver to Companies House any information which is misleading, false or deceptive in any material particular will be personally liable;
- health & safety requirements;
- on the insolvency of the company;
- ensuring that the company keeps proper accounting records and that the accounts are properly filed at Companies House.; and note that:
 - ignorance on the part of a director will not be a valid excuse if the accounts are subsequently found to be misleading; and
 - a director who knowingly or recklessly makes untrue or misleading statements in the Directors' Report and Directors' Remuneration Report will be liable to the company.

TO WHOM ARE DIRECTORS' DUTIES OWED?

- Directors do not generally owe duties to individual shareholders, but rather to the company as a whole.
- A shareholder may bring a claim against a director on behalf of the company for an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust even if that director has not benefited personally.
- If the company is or is likely to become insolvent, directors owe duties to its creditors.