

## **Directors' Responsibilities**

**Compiled by Chairman A. M. Hough**

**For the information and Guidance of Directors of a Masonic Hall**

### **Introduction**

This guide has been assembled from several works of guidance for Directors, and compiled for the information of the Directors of Masonic Halls

The Board of Directors is responsible for the running of the Company to ensure that every member benefits from the successful running of the company.

On appointment, all directors, whether of public or private companies, acquire a large range of responsibilities towards their companies, the company's shareholders, its employees and creditors. A breach of these responsibilities to any one of these parties can be determined not only for the company, but can also lead to civil and possibly even criminal liability for the individual concerned. The law governing the obligations assumed by directors is a mixture of case law and statute, the latter principally being contained in the Companies Act 1985 and the Insolvency Act 1986, although there are numerous other statutes which directly affect the way a company and its directors may operate.

The appointment of directors is made in accordance with the company's articles of association,

The directors cannot act alone as individuals but must work collectively through the board which - whether or not it holds formal meetings - usually conducts and controls company business. The board can, however, delegate its powers to an Executive Board of Directors who maintain the day to day running of the Company.

In addition to executive directors, the company has directors who are non-executive directors.

Since they are not involved in day-to-day management, they still have a duty of care and skill towards the company. A non-executive director will not be excused from exercising the approximate degree of skill and care because it is a not an executive appointment.

Each Director is appointed to represent the interest of shareholders. Such appointment does not permit them to act only in the interest of their principal; **their duty, as with any other director, is to act in the interests of the company as a whole.**

All the directors, whatever their function or title, have the same duties and responsibilities.

Directors must comply with the Companies Act and the general law and they have three primary duties:

**1 A fiduciary duty to the company to act honestly and in good faith and in the best interests of the company as a whole.**

**2 A duty to exercise such a degree of skill and care, when carrying out their duties as a director, as might reasonably be expected from someone of their ability and experience.**

**3 A duty to carry out the statutory obligations imposed by the Companies Act and other legislation.**

Since the issue of the Cadbury Report in December 1993, corporate governance - the system by which companies are directed and controlled - has become a focus of attention for both regulatory authorities and the responsible business community. There is now a far greater expectation by the

courts that all directors must have a reasonable understanding of their legal responsibilities and of the company's accounting requirements. **Anyone becoming a director for the first time should appreciate that claiming ignorance of a director's duties and responsibilities because one is new to the job may well not be an acceptable defence, should things go wrong, the directors and other officers in default may be fined and/or imprisoned.**

The duty to act honestly and in good faith and in the best interests of the company imposes a trustee's responsibility on the directors to take proper care of the assets and future viability of the company, and ensure that payments are properly made and supported by adequate documentation.

Directors must not put themselves in a position where personal interests conflict with those of the company

Directors are required to exercise a degree of skill and care that may reasonably be expected from someone in their position, albeit commensurate with their own knowledge and experience.

The court, and more particularly Lord Justice Hoffman, has recently indicated that when determining whether a director has exercised 'due skill and care' in the course of his or her normal duties, the benchmark to be taken should be the standard of conduct required under the Insolvency Act in relation to wrongful trading. The relevant passage from that Act states:

The facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take, are those which would be known, ascertained, reached or taken by a reasonably diligent person having both:

- a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and
- b) the general knowledge, skill and experience that director has.

Therefore, anyone becoming a director for the first time should appreciate that claiming ignorance of a director's duties and responsibilities because one is 'new to the job' may well not be an acceptable defence if things go wrong.

The third of a director's primary duties is the requirement to ensure that the company complies with its many statutory obligations. Although most of the administrative obligations are contained in the Companies Act and the Insolvency Act.

The obligations imposed upon a limited company to prepare annual accounts, including a balance sheet and profit and loss account, and to file these with the Registrar of Companies, represent the 'quid pro quo' for the benefit of limited liability. The accounts should be prepared in accordance with generally accepted accounting principles, and comply with the relevant accounting standards, as laid down by the Accounting Standards Board. The preparation of the annual financial statements is the responsibility of the directors, who are required to confirm this in their report on the accounts, and also to acknowledge that they are responsible for ensuring that the company keeps proper accounting records in accordance with s 221 of the Companies Act 1985.

The proprietors of a limited company must, unless exempt from the requirement to have audited accounts, also have independent audited accounts, and the auditors are required to report on the accounts to the shareholders.

In addition to reporting to the shareholders on the financial statements, the auditors must satisfy themselves that the company has maintained proper accounting records, which must include:

1 Entries of all cash receipts and payments on a daily basis, including details of the transactions to which they relate and a record of the company's assets and liabilities;

2 Where the company deals in goods (as opposed to services), a statement of stock held at the end of financial year, together with details of stock takings on which the records are based; and

3 With the exception of the retail trade, a sufficient description of goods bought and sold to enable the sellers and purchasers to be identified.

The accounting records must also disclose with reasonable accuracy the financial position of the company at any one time. The directors of all companies preparing group accounts are required to ensure that the accounting records of any subsidiary undertaking, whether an unincorporated business or a limited company, are adequate to enable the parent to prepare proper audited accounts. If adequate records are not maintained, the directors and other officers in default may be fined and/or imprisoned.

The statutory requirements for proper accounting records are only a minimum in the context of a fully effective management accounting system. In the larger and more complex business, much more detailed and sophisticated accounting records may be necessary to maintain financial and management control.

Both the Cadbury and the Greenbury codes were established as responses to areas of specific concern - irresponsible company management and excessive remuneration. The Hampel Committee was set up in November 1995 with a brief, inter alia, 'to seek to promote high standards of corporate governance' and to review the Cadbury Code and any relevant matters arising from the Greenbury Report. They were to consider afresh the roles of directors, shareholders and auditors in corporate governance, it was emphasized that a board's primary responsibility is - **namely, to act in the best interests of the shareholders by enhancing the prosperity of the business over time.**