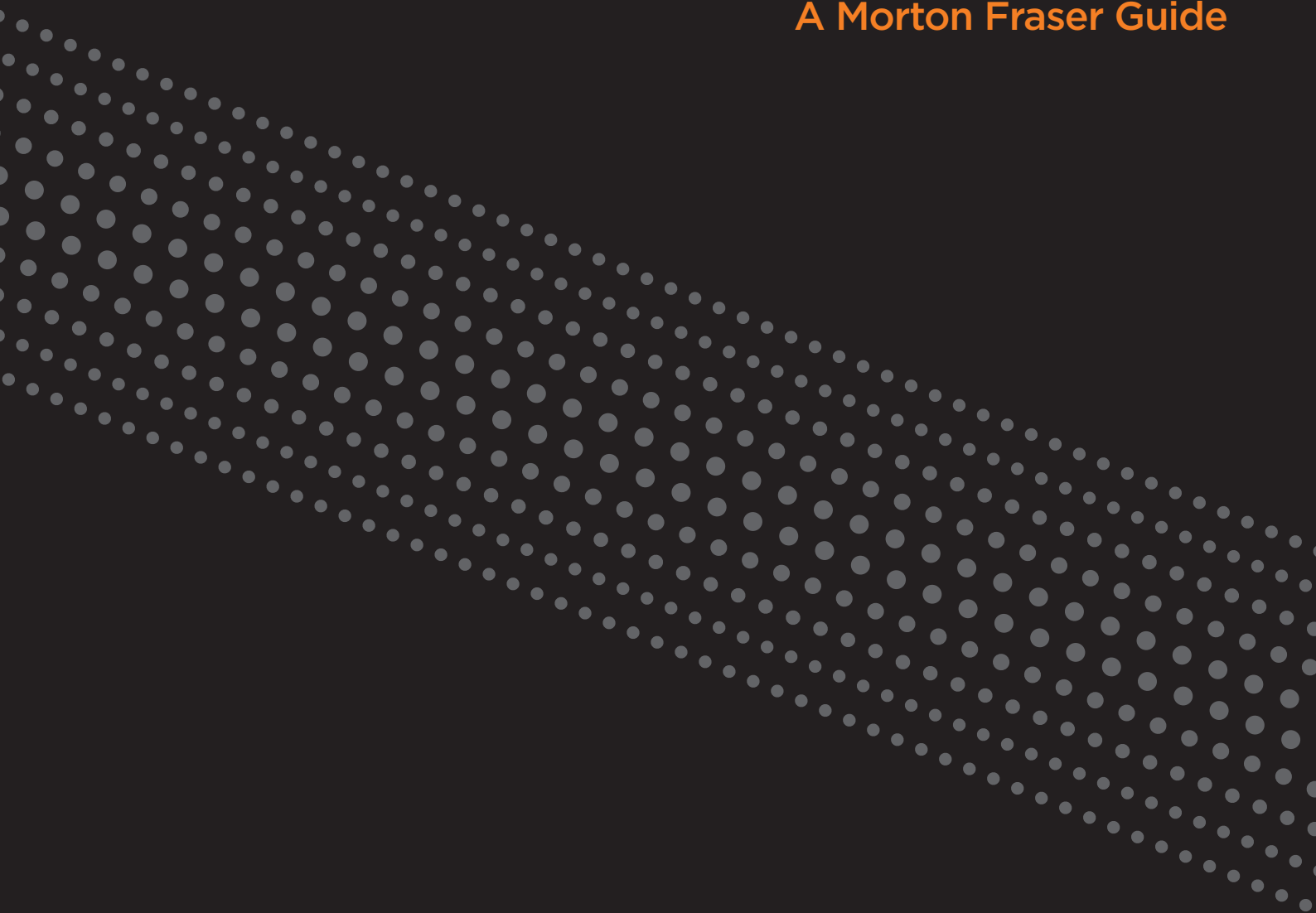


Being a Director of a Private Company

**A Morton Fraser Guide**



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### IMPORTANT FOREWORD – WHO THIS GUIDE IS FOR

This guide is intended primarily as a general reference for all directors of private companies. Directors of public companies should be aware that the law may differ in certain respects from the position stated here and that directors of public companies, particularly listed companies, may be subject to more onerous requirements. However much of what is stated (such as the directors' statutory duties summarised in the second section of this guide) apply to directors of private and public companies alike. The law is stated as at September 2009. The main source of company law in the UK is the Companies Act 2006 – which we refer to in this text as the "2006 Act"

# Introductions

**Adrian E Bell, Corporate Partner, Morton Fraser LLP**

The Combined Code on Corporate Governance provides that the *“board’s role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed.”* While the Code is aimed at larger companies and this guide intended primarily for the directors of private companies, this statement of the role of a company’s board elegantly captures the dilemma for the directors of all companies: how does one most effectively combine an entrepreneurial approach on one hand with prudence, control and risk management on the other. The two are not mutually exclusive and the best boards demonstrate this by running successful sustainable businesses, the activities of which they fully understand.

Directors are accountable to shareholders and in some cases regulators for their stewardship of the company. In order to properly fulfil their obligations they need to understand their role, their scope to take management decisions and the duties and liabilities incumbent on them. It is the framework within which they can properly practice entrepreneurship.

We hope that this guide provides a useful and not too technical introduction to the role of a director and the responsibilities that go with it, but most of all we hope that it contributes in some small way to the effective management of the forward looking entrepreneurial businesses which are clients or friends of this firm.

**Adrian Bell**  
Corporate Partner  
September 2009

**David C Watt, Executive Director, Institute of Directors (Scotland)**

In a climate of growing regulation and scrutiny of business and of the activities of the top business leaders in particular, it can be tempting for directors to retreat behind the barricades - it is however their responsibility to drive businesses forward and this is rarely possible without the taking of risk or exposing themselves to criticism. What is key is that appropriate strategy is developed and pursued, while the associated risks are identified, understood and managed. All this has to be done bearing in mind the expectations of and duties to other stakeholders, particularly shareholders. That is the role of the effective director.

The law surrounding directors is designed to provide a framework within which directors can properly exercise their function. Legislation has for the first time sought recently to spell out what the responsibilities of a director are. We, in the Institute of Directors, are enthusiastic about anything which improves corporate governance and contributes to directors’ understanding of their role and responsibilities.

I warmly welcome the production of this guide and hope that readers find it useful in assisting them to properly fulfil their duties while crucially contributing to their business success.

**David C Watt**  
Executive Director  
Institute of Directors (Scotland)

## The role of director

### Relationship with the company

A company is a separate legal person from its members, but being an artificial entity it cannot function without individuals to manage it. This is the general role of the director: to act on the company's behalf and to manage its affairs.

A director may also have other relationships with the company in addition to his role as a director such as shareholder or an employee. Generally speaking, the rights and responsibilities associated with these different roles are regarded as separate and independent of one another in law. As we will see in more detail below this is reflected in the legal duties of directors, which include requirements to act in the interests of the company and to avoid conflicts between the company's interests and their own.

### Who are the directors?

Company law defines a director as "*any person occupying the position of director, howsoever called*". Accordingly, the term director applies both to persons who have been validly appointed as directors, and to persons who act as directors without being validly appointed, or appointed at all. Company law also treats persons whose instructions the company is accustomed to follow as directors for certain purposes, such as liability for wrongful trading and directors' duties. Such persons are known as "*shadow directors*".

The law does not distinguish between executive and non-executive directors for the purpose of defining directors or their duties. However, the distinction is an important one in practice.

An "*executive director*" is a director who is also an employee of the company and will usually devote his full time and attention to the day to day running of the company. A "non-executive director" is a director who is otherwise independent of the company and not involved in its day to day management. A non executive director will typically be expected to be able to provide an independent objective perspective on strategic matters, based on relevant knowledge and experience

A "*nominee director*" is a director of a company who is nominated by a shareholder. For example, often private equity investors in a company will appoint a nominee director to the board to monitor the company's progress and, consequently, the value of their investment. It is important to note, however, that a nominee director owes the same duties to the company as any other director. When acting as a director, he must put the interests of the company and its shareholders as a whole ahead of those of his appointor and be permitted to exercise his judgement as a director independently without interference or influence.

### Appointment

The first directors of a company are the persons identified as such in the statement provided to the Registrar of Companies at the time it is incorporated.

Subsequent appointments are principally governed by the procedures set out in the company's Articles of Association. It is common for the Articles of private companies to provide for appointments by the following means:-

- a resolution passed by an ordinary resolution of the company's shareholders; or
- by a resolution of the existing directors.

The incoming director will be asked by the company to provide the following personal details which must be recorded in the company's own register of directors and with Companies House by means of a form 288a, which the director will also be asked to sign to confirm his consent to being appointed as a director of the company:-

Full name & address, & details of any former names;  
Residential address;  
Date of Birth;  
Nationality;  
Occupation; and  
Details of any other directorships

These details are held on a publicly accessible register by Companies House. In addition, the company is also required to maintain a register of its directors.

### DID YOU KNOW?

The definition in law of a director has nothing to do with the filing of notice of appointment with the Registrar of Companies, and status as a director is not determined by any such filing. However, companies are required by law to file such notices; and they can be relevant in considering whether a person has been "*held out*" as a director to third parties.

One further consequence of the company law definition of a director is that the internal use of the title "director" to denote seniority, such as "regional sales director" does not, in law, make a person a company director. Conversely, a company could choose to call all its directors by a different title, such as managers, without changing the fact that they are directors for company law purposes.

### DID YOU KNOW?

From 1st October 2009, the appointment process for directors will see certain changes brought in by the 2006 Act. The existing form 288a will be replaced by forms AP01 (for individual directors) and AP02 (for corporate directors). Furthermore, incoming directors will be required to provide a service address as well as their residential address, and it is the service address and not the residential address which will be shown on the public register.

In addition to the form 288a and the Articles of Association, an executive director's appointment will often also be documented in a written service agreement which sets out the terms of his employment by the company. It is, in fact, a legal requirement that all employees are provided with a written statement of the terms of their employment. However, the absence of such a service agreement does not determine whether or not a director is an employee; that will depend on the substance of what they do for the company.

Non-executive directors may also be asked to sign a letter of appointment setting out the terms of their appointment with the company. Sections 188-189 of the 2006 Act require that "long-term" service contracts (i.e. over 2 years) be approved by resolution of the shareholders. In addition, all directors' service agreements must be made available for inspection by the shareholders.

The Companies Acts permit companies to indemnify directors against liabilities incurred to third parties and to purchase insurance on behalf of directors in respect of liabilities arising from their breach of duty or negligence, generally called D&O insurance. It is prudent for incoming directors to check whether such arrangements will be made on their behalf by the company.

### Remuneration

A director is not entitled to remuneration by virtue of his office alone. Before a director can receive remuneration it must be approved in accordance with the requirements of the company's Articles. Most commonly, the authority to set remuneration will be given to the board of directors. In exercising this power, the board must act in accordance with their general duties as directors. Alternatively, the articles may reserve to the shareholders the right to determine directors' remuneration. It is important to note that any payments made to a director which have not been authorised in accordance with the requirements of the company's articles will be void and accordingly liable to be recovered from the director in question.

### Powers of Management

The company's Articles (in conjunction with the 2006 Act) set out how powers are divided between the shareholders and directors. It is common for the Articles to confer general powers of management of the company's business on the directors. Provided that the directors exercise these powers in accordance with their general legal duties, the company's shareholders will not usually have a right to direct how the directors manage the company. However, the shareholders retain ultimate control by virtue of their ability to remove any director by passing an ordinary resolution, which is discussed further below.

As a general rule, the powers of directors are vested in the board and must be exercised collectively, at directors meetings, rather than individually. Resolutions at directors meetings will usually be approved by majority decision, with each director in attendance having one vote. The Articles may or may not provide for the chairman of a board meeting to have a casting vote in the event of a tied vote. As an administrative matter, it can be useful to provide in the company's Articles that the directors can participate in meetings remotely by conference call, etc, as such a right does not arise under general company law in the absence of express provision. In the case of companies incorporated after 1st October 2009, the default "Model Articles" for private companies already contain such a provision.

It is important that all decisions taken at directors meetings are documented in board minutes – s248 of the 2006 Act makes it a statutory requirement to keep such records for 10 years. Furthermore such board minutes which have been signed by the chairman of the meeting are treated as evidence, unless the contrary is proven, that: the meeting was duly held and convened; that all proceedings at the meeting duly took place and that all decisions made at the meeting were valid.

While the general rule is that directors must make decisions collectively (i.e. by majority decision of the board), it will often be the case that the company's articles permit the directors to delegate their powers to individual directors or committees. This reflects the commercial reality that much of the day to day management of the business of small private companies will typically be carried on by a single executive director.

### DID YOU KNOW?

A director has statutory rights under the 2006 Act to inspect the accounting records of the company. Shareholders do not have an equivalent right unless this is expressly provided for in the company's Articles.

### Termination of Office

The company's Articles or a director's Service Agreement may specify the terms for retirement or resignation by the director. Subject to any such terms, the general rule is that a director is entitled to resign immediately at any time upon giving notice. The Articles may also set out circumstances in which a director is deemed to vacate their office, such as: if he becomes bankrupt; becomes of unsound mind; or fails to attend board meetings for a long period of time.

Some companies' Articles require a proportion of the directors (commonly one-third) to retire by rotation at each annual general meeting of the company (although private companies are no longer required by law to hold annual general meetings). Where this is the case, the Articles should set out a procedure for the election of new directors. Usually, there is nothing to prevent the directors who are retiring from seeking re-election as part of this process.

A company's shareholders are given a statutory right to remove directors by ordinary resolution under section 168-169 of the 2006 Act subject to the following procedural safeguards:

- the right may only be exercised at a general meeting and not by way of written resolution;
- 28 days notice of the intention to move the resolution must be given the company, and
- the director is entitled to make written representations to the shareholders regarding his proposed removal and to be heard at the meeting.

The statutory right to remove a director may be used before the expiration of the director's period of office and cannot be taken away by anything in the company's Articles or in any agreement between the company and the director. The right to remove a director is one of the most important protections afforded by company law to the shareholders to allow them to assert ultimate control of the company's management.

The removal of a director under s168 of the 2006 Act does not deprive him of any compensation or damages payable in respect of the termination of any employment held by the director with the company. Also, in the case of “quasi-partnership” companies, where the directors are also the owners of the business and had a legitimate expectation to participate in the management of the company, removing them as a director without making a fair offer to buy their shares can amount to “unfair prejudice” which could entitle the director to seek redress through the courts.

## Directors' duties

### Statutory duties

The 2006 Act sets out seven general duties which a director has to the company:-

- To act within the powers given by the company's constitution and to exercise those powers only for a proper purpose.
- To promote the success of the company for the benefit of its members as a whole.
- To exercise independent judgment.
- To exercise reasonable care, skill and diligence.
- To avoid conflicts of interest.
- Not to accept benefits from third parties.
- To declare any interest which they have in a proposed transaction or arrangement with the company.

The general duties are owed by all directors, whether they are executive or non-executive. They also apply to directors who have not been formally appointed as directors but are acting as such. It is important to note that the statutory duties are owed by the director to the company and not to its individual shareholders or third parties. Accordingly, it is the company which has the ability to bring any legal action against the director where it believes that the duties have been breached (although, in certain circumstances, individual shareholders may be permitted by the courts to bring proceedings on its behalf: a so called “derivative action”).

### DID YOU KNOW?

In the DTI's (now part of the Department for Business, Innovation and Skills) guidance on directors' duties they gave the following high level summary of what is required:-

- Act in the company's best interests, taking everything you think relevant into account
- Obey the company's constitution and decisions taken under it
- Be honest, and remember that the company's property belongs to it and not to you or to its shareholders
- Be diligent, careful and well informed about the company's affairs. If you have any special skills or experience, use them
- Make sure the company keeps records of your decisions
- Remember that you remain responsible for the work you give to others.
- Avoid situations where your interests conflict with those of the company. When in doubt disclose potential conflicts quickly
- Seek external advice where necessary, particularly if the company is in financial difficulty

### The duty to promote the success of the company

The director's duty to promote the success of the company for the benefit of its members as a whole has attracted particular attention from commentators since it was introduced in October 2007.

In part this is because this expression of the duty is a new one introduced by the 2006 Act, and its scope has not yet been fully tested by case law. Also, in discharging this duty, the 2006 Act requires a director to have regard (amongst other factors) to the following list of specific factors:-

- 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;
- the impact of the company's operations on the community and the environment;
- the desirability of the company maintaining a reputation for high standards of business conduct; and
- the need to act fairly as between the members of the company.

While considering these factors (to the extent that they are relevant) is mandatory, it is clear that they are subsidiary to the overall duty to promote the success of the company for the benefit of its members. Directors should not just pay ‘lip service’ to these factors in their board minutes of their meetings in order to comply with the statutory duty, but rather, take into consideration these factors where they are genuinely relevant to a decision and, where the decision is of significance and/or potentially controversial, ensure that the minutes record that they have considered those factors. In short directors should build consideration of the facts into the substance of their decision making applying an appropriate weighting to each factor relative to its importance to their company.

### The duty to avoid conflicts of interest

Section 175(1) of the 2006 Act requires a director to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

Some points to note:-

- the duty extends to situations where there is the potential for a conflict of interest, and not just those where such a conflict has actually arisen. The duty also arises in relation to an *"indirect interest"*, such as where the director is a shareholder in a company whose interests conflict with those of the company of which he is a director.
- Section 175(2) states that the duty applies *"in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity)"*.
- The duty does not apply to transactions between the director and the company, which are dealt with under the separate duties under sections 177 and 182 of the 2006 Act to disclose such interests, these are discussed further below.
- The duty is not breached where prior authorisation has been given by the other directors who do not have an interest in the relevant matter in accordance with section 175(5)-(6) of the 2006 Act. In the case of private companies incorporated before 1st October 2008, such authorisation may only be given where the shareholders have authorised the directors to do so by passing an ordinary resolution to this effect. Many companies are taking steps to amend their articles to permit this.

### The duty to disclose interests in transactions with the company

Section 177(1) of the 2006 Act requires a director who is *"in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company"* to declare the nature and extent of that interest to the other directors.

Section 182(1) introduces an equivalent duty in respect of existing transactions and arrangements with the company, where they have not already been disclosed under Section 177(1).

The duty can be satisfied by a verbal declaration of the interest at a meeting of the directors, by written notice to the other directors (which will be deemed to form part of the proceedings at the next board meeting), or by a general notice, which is a notice that a director has an interest in a specific body corporate, firm or person and should be regarded as having an interest in any transaction or arrangement with that person.

### DID YOU KNOW?

In addition to the directors' duties to declare their interests in transactions, a director must also obtain shareholder approval for transactions of the following types:-

- *"Substantial Property Transactions"*, which are transactions by which either:-
  - a director of a company, or of its holding company, or a person connected with such a director, acquires, or is to acquire from the company, a substantial non-cash asset; or
  - the company acquires, or is to acquire a substantial non-cash asset from such a person.

In this context, *"substantial"* means that the asset in question has a value at the time the transaction is entered into which exceeds the lesser of £100,000 or 10 per cent of the company's net assets as shown in the most recent statutory accounts.

- Loans made to a director by the company or its holding company. Before an approval resolution is adopted, a memorandum must be prepared setting out:
  - the nature of the transaction;
  - the amount of the loan and the purpose for which it is required; and
  - the extent of the company's liability under any transaction connected with the loan.

### Insolvency

When a company is insolvent or on the verge of insolvency, its directors owe a duty to the company to act in the best interests of the company's creditors. This duty effectively takes precedence over acting in the best interests of the company's members where it applies. Also relevant are the statutory duties to avoid wrongful and fraudulent trading, which are discussed below in the following section *"the director's personal position"*.

## The director's personal position

### Wrongful and Fraudulent Trading

Wrongful trading and fraudulent trading are circumstances which can arise from the way that a company's business is carried on prior to it ceasing trading.

Fraudulent trading arises where the business of a company has been carried on with the intent to defraud creditors or for any other fraudulent purpose. Any persons who were knowing parties to carrying on business in such a manner (including a director) can be ordered by the court to contribute to the company's assets upon application by the liquidator. Liability for fraudulent trading requires that the persons involved were knowing parties to dishonest behaviour. Fraudulent trading is also a criminal offence under the Companies Act 2006.

Wrongful trading (a far more common situation) arises where a company has gone into insolvent liquidation and at some earlier time, that person knew or ought to have concluded that there was "*no reasonable prospect*" that the company would avoid going into insolvent liquidation.

The standard by which the court judges what the director should have known or ascertained is the standard of a "*reasonably diligent person*" having both:-

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

The director's conduct is therefore judged both by reference to the skills and knowledge which he actually has, and those which should reasonably be expected to have in order to carry out his functions.

The consequence of wrongful trading is that a liquidator of an insolvent company can apply to the courts to seek an order requiring the director in question to make a contribution to the assets of the company. A finding of wrongful trading (or fraudulent trading) may also lead to the director being disqualified from being a director of any company for a period of up to 15 years if a disqualification order is made.

As there is no need for dishonesty on the part of the directors to lead to a finding of wrongful trading, it is clearly an issue which every director must be mindful of when managing a business which is, or could become in financial difficulty. As wrongful trading generally arises in situations where a company continues to trade after it should have ceased to do so, it is strongly advisable for directors of companies in financial difficulties to take steps such as:-

- actively monitoring the financial position of the company;
- holding regular board meetings;
- and taking professional advice from insolvency practitioners sooner where the situation merits it.

### DID YOU KNOW?

A person who was a director of a company which has gone into insolvent liquidation at any time during the period of twelve months prior to the company going into insolvent liquidation, commits an offence if, within five years of the liquidation, he becomes a director or is involved in the management of another company which has the same or similar name as the liquidated company (a so called "*phoenix company*"). A person who breaches this restriction commits a criminal offence and is also personally liable for the debts of the "*phoenix company*". There is an exception to this restriction where the business has been purchased from a licensed insolvency practitioner and advanced notice has been given to creditors.

### Disqualification orders

A disqualification order is an order made by the court under the Company Directors Disqualification Act 1986 which prevents a person from being a director of any company, or in any way, whether or directly or indirectly concerned in the management of a company. The order will specify the period of disqualification, which, in the case of an order made against an unfit director of an insolvent company, may be anywhere between two and fifteen years.

Any time a company fails, the insolvency practitioner must send a report to the Secretary of State on the conduct of all directors who were in office during the last three years of the company's trading. The Secretary of State then determines whether or not it is in the public interest to seek disqualification orders against any of the directors.

Conduct which may lead to disqualification could include:-

- wrongful or fraudulent trading;
- failure to co-operate with an insolvency practitioner administering the company's affairs; or
- failure to keep proper accounting records or to file accounts or other returns with Companies House.

### Breach of directors' duties

A breach by a director of his legal duties exposes him to possible legal action by the company, as it is the company to whom he owes his duties. However, in certain circumstances the shareholders of the company may be able to bring proceedings on behalf of the company. We discuss these so called "derivative" proceedings further below.

The remedies available to the company for breach of a director's duties could include:-

- damages;
- interdict (an order preventing the director or the company acting in a particular way);
- the setting aside of transactions;
- requiring the director to account for any secret profit which he has made, or to return property to the company; and
- terminating the director's service contract.

Where the company seeks damages for breach of duty, the measure of damages will be the loss suffered by the company (or where this is irrelevant) the profit made by the director.

If the Company has gone into liquidation, section 212 of the Insolvency Act provides that the court may, on application of the receiver or liquidator or any creditor or contributory, order any director or other officer to:-

- account for any money or property which they have misapplied, retained or become accountable for, or;
- to contribute such sum to the company's assets by way of compensation for any misfeasance or breach of fiduciary or other duty as the court thinks fit.

### Derivative Proceedings

The Companies Act 2006 provides a statutory procedure for shareholders to bring proceedings on behalf of the company arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company. The statutory procedure requires the applicant to show at an initial hearing that there is a good case to permit them to continue (or in Scotland, to raise) derivative proceedings. In other words, the onus is on the shareholder to demonstrate why it is appropriate to bring derivative proceedings in the case in question, rather than leave the action in the hands of the company.

It has been anticipated by some commentators that the introduction of a statutory right to bring derivative proceedings would lead to more such actions than had previously been the case under the common law, where such actions were extremely rare in practice. However, so far, this does not seem to have been the case. The Scottish courts have recently granted permission to bring derivative proceedings under the statutory procedure for the first time and it is possible this could now lead to more actions of this kind being brought.

### Personal Guarantees

it is quite common for directors, particularly those of small and medium sized companies, to be asked by the company's bank or by suppliers to give a personal guarantee of its obligations. By giving a personal guarantee, the director undertakes to meet some or all of the company's obligations if it fails to do so.

The exact basis of the director's liability will depend on the terms of the guarantee – it may be limited to a fixed amount, and the terms of the guarantee may or may not require the bank to look to the company for the money before the director. However most well drafted guarantees are prepared on a blanket basis and are likely to result in a primary liability to meet the relevant debt

It is standard practice these days for banks to require directors to obtain independent legal advice before giving a personal guarantee, and we would always recommend that directors do so in any event. Giving a personal guarantee is probably the most common source of personal liability for directors which we see in practice and many directors we have advised do not seem to be fully aware of the terms of the guarantees they have given.

#### DID YOU KNOW?

Resigning as a director will not bring to an end, nor fix the maximum level of a director under a personal guarantee. An outgoing director should, where possible, seek to have lifted any personal guarantees which he has given (although obviously this requires the agreement of the creditor).

### Other sources of personal liability

There are literally hundreds of criminal offences created by statutes which can apply to directors of companies. Many of these are administrative in nature, such as the requirements under company law to file accounts and copies of any amended versions of the company's Articles with Companies House. Others relate to breach of substantive law for which the director is deemed to be culpable in areas such as the environment, health and safety, employment law and competition law. Many of these offences, particularly the administrative ones, are punishable by fine only, but in some cases imprisonment is also possible.

As a general rule, directors are not personally liable to third parties under the company's contracts. However, there are certain exceptions:-

- for directors who are setting up their own company, contracts entered into before the company is incorporated ("*pre-incorporation contracts*") expose the person entering into the contract to personal liability until and unless they are properly ratified and adopted by the company.
- as stated above, directors who expressly agree to be personally liable for debts incurred by the company by giving a personal guarantee will be liable on the terms of the guarantee.
- if the directors contract in their own name without disclosing that they are acting for the company, or if the directors disclose that they are directors, but do not purport to bind the company in the words used within the contract, e.g. "*I, a director of [company] hereby agree*", then the general law of contract and agency will expose the director in question to personal liability. It is therefore important to make sure that contracts and other documents which the directors sign are properly expressed as being made by the director on behalf of, and in the name of the company.

### Indemnities and Liability Insurance

Under the 2006 Act, a company may :-

- indemnify its directors in respect of proceedings brought by third parties (covering both legal costs and the financial costs of any adverse judgment, except for the legal costs of unsuccessful defence of criminal proceedings, fines imposed in criminal proceedings and penalties imposed by regulatory bodies);
- meet a director's legal expenses as they are incurred (whether the litigation is by the company or a third party). The director must repay the costs to the company if the defence is unsuccessful (except where an indemnity has been provided under the above provision);
- indemnify directors of a company that is trustee of an occupational pension scheme against liability incurred in connection with the company's activities as trustee of the scheme, except for the legal costs of unsuccessful defence of criminal proceedings, fines imposed in criminal proceedings and penalties imposed by regulatory bodies; and
- purchase insurance for its directors against any liability attaching to them in connection with any negligence, default, breach of duty or breach of trust by them in relation to the company of which they are a director.

It is important to note that companies are permitted, rather than required, by company law to do any of the above. Therefore, incoming directors are advised to confirm the company's position with regard to these matters before accepting appointment.

Liability insurance or "*D&O insurance*" can be purchased to protect directors from liabilities resulting from negligence or breach of duty. The policies will not normally extend to anything which is done dishonestly or fraudulently. As noted above, the company may pay the premiums in respect of such insurance.

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Austin has a particular expertise in general corporate and commercial contract work, including significant experience of mergers and acquisitions, joint ventures, equity investments, shareholder disputes, partnership structures and public sector work. Austin also regularly advises banks on acquisitions being funded by them. Austin is dual qualified in both Scots and English law and has a wealth of experience in the English Market. He was named as Corporate Lawyer of the Year 2008 at the Law Awards of Scotland.



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Lauren works on corporate and commercial transactions including share and asset acquisitions and disposals, joint ventures and corporate reorganisations. She has spent time on secondment to the Royal Bank of Scotland's regulatory team. More recently, Lauren has developed an expertise in advising on the structuring of residential and commercial property funds, and the promotional aspects thereof.



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David qualified as a solicitor in 2003 and has extensive experience of complex corporate transactions in both the commercial and not-for-profit sectors. David has dealt with share and asset purchases and disposals, corporate and partnership reorganisations and commercial contracts including joint venture agreements, and has acted for public bodies such as Communities Scotland. He has also completed a spell of secondment with a major financial institution (work confidential).

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