A guide to being a

A Director

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Who is this guide 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 applicable to directors of public companies 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 applies to directors of private and public companies alike.

The contents of this paper are for information only and are not intended to be construed as legal advice and should not be treated as a substitute for specific advice.

Introduction

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 is 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 the 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 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 Morton Fraser LLP
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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 fulfil their duties while crucially contributing to their business success.

David C Watt
Executive Director
Institute of Directors (Scotland)

The role of the 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".

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.

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.

DID YOU KNOW?

The definition in law of a directorhas nothing to do with the filing of notice of appointment with the Registrar of Companies, and statusas a director is not determined by any such filing. However, companies are required by law tofile such notices; and filed noticescan be relevant in considering whether a person has been "heldout" as a director to third parties

Appointments

The first directors of a company are the persons identified as such in the statement provided to the Registrar of Companies as part of form IN01, 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.

An ordinary resolution is a resolution on which more than 50 per cent of the votes cast are in favour of the resolution.

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 AP01:

- full name and address, and details of any former names;
- residential/service address;
- month and year of birth; and
- nationality.

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.

On receipt of form AP01 or IN01 Companies House will write to the director identified, asking him to confirm that he consents to being appointed as a director of the company.

In addition to the form AP01 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 he does 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 Companies Act 2006 (the "2006 Act") require that long-term service contracts (i.e. over two years) be approved by resolution of the shareholders. In addition, all directors' service agreements must be made available for inspection
by the shareholders.

The 2006 Act permits 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.

DID YOU KNOW?

Since October 2010, a company must have at least one individual director. From October 2016, most companies cannot appoint corporate directors, so must have only individual directors.

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 – section 248 of the 2006 Act makes it a statutory requirement to keep such records for 10 years.

Furthermore 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 his 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 sections 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 by 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 section 168 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 a director is also the owner or part owner of the business and has a legitimate expectation to participate in the management of the company, removing him as a director without making a fair offer to buy his shares can amount to "unfair prejudice" which could entitle the director to seek redress through the courts. If the director who is removed from office as a director is also an employee of the company, the removal of the director as a director is likely to be constructive dismissal of the director as an employee.

Director's 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; and
- to declare any interest which he has 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 right 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?

The Department for Business, Innovation and Skills' guidance on directors' duties gives 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; and*
- *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. 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 the 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 factors 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 a conflict has actually arisen. The duty also arises in relation to an "indirect interest", such as where the director is a shareholder in another 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 imposed by sections 177 and 182 of the 2006 Act to disclose such interests, which are discussed further below; and
- the duty is not breached where prior authorisation has been given in
- accordance with section 175(5)-(6) of the 2006 Act by the other directorswho do not have an interest in the relevant matter. In the case of private companies incorporated before 1st October 2008, such authorisation may only be given where the shareholders have resolved by ordinary resolution that the directors may give the authorisation.

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 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 body, firm or person. The declaration must be made before the company enters into the relevant transaction or arrangement.

Insolvency

When a company is insolvent or on the verge of insolvency, its directors owe a duty 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. Also relevant are the statutory duties to avoid wrongful and fraudulent trading, which are discussed below in the following section "the directors' personal position".

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 connection 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 company's 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.*

The directors’ 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 the company going into insolvent liquidation.

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 knowingly 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 knowingly parties to dishonest behaviour. Fraudulent trading is also a criminal offence under the Insolvency Act 1986.

Wrongful trading (a far more common situation) arises where a company has gone into insolvent liquidation and at some earlier time a director 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 as the functions 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 for an order to seek an order requiring the director in question to make a contribution (of such amount as the court decides) 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.

As there is no need for dishonesty on the part of a director 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 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 to review the company’s position; and
- taking professional advice from insolvency practitioners.

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 12 months prior to the company going into insolvent liquidation commits a criminal 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, in addition to committing a criminal offence, 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 advance 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 being in any way, whether 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 15 years.

The liquidators of an insolvency company must send a report to the Department for Business, Innovation and Skills on the conduct of all directors who were in office during the last three years of the company's trading. The Department of Business, Innovation and Skills then determines whether or not it is in the public interest to seek a disqualification order against any of the directors.

Conduct which may lead to disqualification includes:

- wrongful or fraudulent trading;
- failure to cooperate with the insolvency practitioner administering the company's affairs;
- failure to keep proper accounting records or to file accounts or other returns with Companies House; or
- having been convicted of offences overseas in connection with the promotion, formation, management, liquidation or striking off of a company.
- Where a disqualification order is made and the conduct of the disqualified person has caused loss to creditors, the court may order the director to pay compensation for the benefit of creditors.

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 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 the profit made by the director.

If the company has gone into liquidation, section 212 of the Insolvency Act 1986 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 he has 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 2006 Act 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 court 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 to the court why it is appropriate to bring derivative proceedings in the case in question, rather than leave the action in the hands of the directors of the company.

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 company's suppliers to give a personal guarantee of the company's 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 holder of the guarantee to look to the company for the money before seeking payment from the director. However most well drafted guarantees are prepared on a blanket basis and are likely to result in a primary liability on the director 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's liability 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 the contract is 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 directors in question to personal liability; and
- a court can order a director to contribute such sum to the company's assets by way of compensation for any misfeasance or breach by the director of fiduciary or other duty as the court thinks fit.

It is therefore important to make sure that contracts and other documents which a director signs 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 a director of the company who is the trustee in respect of proceedings brought by third parties against the director (covering both legal costs and the financial costs of any adverse judgment, except for the legal costs of any 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 any 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.

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.

Meet our team

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Adrian is a commercial lawyer of 25 years' experience advising companies, partnerships, third sector organisations, local and national government and individuals on a wide variety of commercial legal needs.

He has advised on numerous company and business sales and purchases, start-ups and investments and joint ventures many including an international element. He has experience of share schemes, shareholders agreements and corporate governance generally.

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Austin is a Partner and Head of the Corporate Division at Morton Fraser and sits on the firm's Management Board. Austin is dual-qualified (Scots and English law) having practised in England for seven years before moving to Scotland and becoming Scots qualified in 1999.

Austin's corporate and commercial practice mainly advises owner-managed SMEs and he has particular expertise in private equity/angel investment (advising investees as well as investors), company share/asset sales and purchases, joint ventures, corporate restructuring, contractual commercial matters (agency, distribution and franchising), IP, IT and data protection.

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Iain has over 30 years' experience as a corporate and commercial lawyer acting for large and small business and third sector organisations, ranging from stock exchange listed multi-nationals to small owner managed business and from national to small local charities.

Having been since 1978 with Shepherd and Wedderburn (spending 29 years there as a partner) Iain joined Morton Fraser in 2011. Iain has been a licensed insolvency practitioner and was Head of Banking and latterly Head of Business Services and Professional Partnerships whilst he was with Shepherd and Wedderburn, underlining the breadth and depth of his experience.

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THANK YOU.

Morton Fraser is a growing Scottish independent law firm, delivering clear advice to businesses, the public sector, individuals and families.

For any of these services please contact us.

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