

## Isle of Man Directors' Duties: Your First (and Most Important) Agenda Item

*Becoming a director of an Isle of Man company is a significant responsibility. Whether you are a founder-director of a new venture or joining the board of an established business, it is important to understand that directors are responsible for the overall management of the company and must comply with a range of legal duties. While in the UK director duties are codified in statute (for example under the UK Companies Act 2006), the Isle of Man has not enacted a comprehensive statutory code of directors' duties. Instead, the duties for directors are derived from common law and, in part, statutory obligations under the Isle of Man's relevant companies (and other) legislation.*

### Who do directors owe duties to?

Directors' fiduciary duties are owed to the company itself, not to individual shareholders or other group companies. In certain situations, such as when the company is nearing insolvency, directors must also consider the interests of creditors.

### What are a director's key duties?

Director responsibilities fall broadly into three main areas:

#### 1. Duties of Skill and Care

Directors owe certain duties of skill and care to the company, although they are not expected to exercise a level of skill which they do not have. Put broadly, the required level of skill and care is that which may reasonably be expected from a person of the director's knowledge and experience.

Therefore, the standard of care to be expected of directors is the standard objectively to be expected of someone in their office, layering on top any additional skill and experience possessed by that particular director.

#### 2. Fiduciary Duties

These are sometimes compared to the obligations of a trustee. They include duties to:

- act in **good faith** in the best interests of the company;
- use director powers only for a **proper purpose**;
- avoid **conflicts of interest**;
- exercise **independent judgement**;
- **keep informed**: directors have a continuing duty to acquire and maintain sufficient knowledge and understanding of the company's business and its environment so as properly to discharge their responsibilities;
- **safeguard the company's assets**: directors must take reasonable steps to ensure that the company's assets are not mis-applied, wasted or improperly exposed to risk.

### 3. Statutory & Regulatory Duties

Under the Isle of Man's companies legislation (for example the Companies Act 1931–2004 and the Companies Act 2006) and other statutory and regulatory regimes, directors must, among other things:

Note that if an offence is committed by the company with the consent or connivance of a director (or due to their neglect), the director may also be personally liable.

- ensure proper accounting records are kept.
- comply with filing and disclosure requirements.
- take care not to give misleading or untrue statements about the company's financial position.

#### When must directors consider creditors?

If a company becomes insolvent or is likely to become insolvent (or is in the "vicinity" of insolvency), directors must shift their focus from serving the shareholders to protecting the interests of creditors. Failure to do so may lead to personal liability for the director.

#### Why does this matter?

Failing to comply with directors' duties can lead to:

- personal financial exposure;
- disqualification from acting as a director;
- civil claims or criminal sanctions; and
- reputational harm.

For example, in the recent case of *Financial Services Authority v Megson*, the Isle of Man Court disqualified Mrs Megson from acting as a director or in any way managing a company for a period of 12 years. The Court found she was unfit to act as a company officer. This decision demonstrates that in the Isle of Man such duties are taken very seriously, and the consequences of failing to comply are real and significant.

Directorship is not merely a title - it carries real legal responsibility.

#### How Cains can help

Every company and situation is different. If you are a director, are thinking about becoming one or have concerns about how your company is being managed, it is important to understand your obligations clearly. Our experts at Cains advise boards, business founders and corporate groups across all sectors on good governance and compliance with Isle of Man law. If you would like guidance on your duties or support with board decision-making, please get in touch with our Corporate team.

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