



Local Authority Trading Company Statutory Responsibilities

Members and officers who sit as Directors of companies need to be aware of their statutory responsibilities in that role. Training will be provided but in summary Directors owe the following duties (s171-177, Companies Act 2006):

- a fiduciary duty to the company to act honestly and in good faith and in the best interests of the company as a whole. Directors must ensure they act within the company's constitution.
- a general duty of care, skill and diligence to the company. A Director is not expected to be an expert, (unless he or she holds themselves out to be one) but is expected to use due diligence and to obtain advice if necessary.
- to exercise independent judgement. If you are in a position where the interest of the Council are relevant you must disclose this. You cannot simply vote in accordance with the Council mandate.
- To avoid conflicts between the interests of the Council and the company.
- Not to make a private profit from their position. You must therefore disclose any interests you or your family have in relation to the company's contracts.
- To ensure the company complies with other legislation such as health and safety legislation.
- A range of accounting and financial responsibilities, including the preparation of accounts for each financial year.

Individual Directors can be personally liable in these circumstances:

- If they knowingly cause the company to act beyond the scope of its Memorandum of Association.
- Liable for breach of trust if they misapply the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a Co-Director of which they are aware.
- If they fail to act in accordance with the best interests of the company or use their powers improperly or make a personal profit from their position as Director, then they may be personally liable for loss to the company and may be required to give to the company the personal profit made.
- If the level of skill and care shown by a Director falls below that which could reasonably be expected and the company suffers loss, the director will be liable for the loss incurred.
- If a Director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, the Court may require the Director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the Director took all reasonable steps to minimise the loss to the creditors.

- Directors will also be liable if to their knowledge the company carried on business with intent to defraud creditors or any other person, or for any other fraudulent purpose.

Directors also need to be aware that:

- As duties are owed to the company the company must bring any action against the Director. Typical remedies include damages and setting aside the offending transaction. Very serious breaches could lead to disqualification of a Director (Company Directors Disqualification Act 1986).
- A director who does not scrutinise and understand the company's accounts risks incurring personal liability to the company's creditors for wrongful trading (s214 or S246ZB of the Insolvency Act 1986) if they continue to trade when they knew or ought to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation or insolvent administration. Fraudulent trading is a criminal offence.
- Members and officers as directors could be personally liable to the bank for debts of the company.
- Officers and members acting within their own local authority within their powers and acting in good faith have statutory immunity against personal liability (s265 Public Health Act 1875). This does not apply where they act on a local authority owned company.
- The Council may choose to indemnify all Councillors and Officers appointed as Directors for any loss or damages arising from any act or omission as a Director (s112 Local Government Act 1972). It does not cover defamation, a constitution offence or the result of fraud. There is provision for re-payment of sums expended by the council or the insurer where a member has been found to be in breach of the Member's Code of Conduct or a member or officer has been convicted of a criminal offence (Local Authorities (Indemnities for Members and Officers) Order 2004).
- Directors should be aware of whether the body owes any obligations to regulators or other outside bodies e.g. Homes and Communities Agency, Information Commissioner, Register of Companies, or Health and Safety Executive.
- Members also need to be mindful of the possibility of the issues of a prejudicial interest and a bias or closed mind arising when considering a council matter (s25 Localism Act 2011).

If as a Director you act properly, use adequate skill and act in the best interests of the company you are unlikely to attract personal liability, given companies' status as separate legal bodies.