

Risk

Particular Exposures

Exposures for directors of publicly listed companies

Be aware that directors may be personally liable for loss resulting from untrue or misleading statements in or omission of required information in listing particulars in respect of an offer of securities to the public or an admission to trading on a regulated market

If the director has been dishonest or reckless regarding the truthfulness of the information provided, they may be subject to both civil and criminal prosecutions. Directors should:

- seek appropriate legal advice
- complete full and proper due diligence
- personally review and query the prospectus or listing particulars before signing anything.

Exposures following Company Insolvency

It is not uncommon for directors to face costly proceedings in circumstances where their company becomes insolvent, as liquidators will carry out extensive investigations into the causes and will often seek to hold persons responsible and/or to recoup monies lost. Be aware that the following may apply in your jurisdiction:

- you may be under a duty to minimize loss to the company and its creditors as soon as you know (or ought to have known) that there is no reasonable prospect of the company avoiding an insolvent liquidation
- your actual skill, knowledge and experience (and what a reasonable director in your position should possess) may be taken into account
- you may be under a duty to obtain professional advice if at any time there is uncertainty as to the company's ability to continue as a going concern
- you may subsequently be exposed to director disqualification proceedings if failures are identified.

Bribery

Many jurisdictions are focused on stamping out bribery in companies and have legislated accordingly. It is important to bear in mind that statutes covering bribery are often international in scope

Directors should be mindful:

- that the business, even if based entirely in one jurisdiction, may be held responsible for the acts of its foreign associated persons
- that organizations incorporated elsewhere but carrying on business in another jurisdiction or employing citizens from the other jurisdiction should not assume that they will fall outside the reach of bribery laws

Directors may also be exposed to liability when the company itself is being investigated. In the UK and US, for example, prosecutors can make deals with the company in exchange for lighter penalties. Such arrangements require the full cooperation of the company, which could include the company providing the prosecutor with information and documents during the course of its investigation which can then be used for the purpose of prosecuting directors.

Health Safety and Environmental Law

Directors should be aware of:

- applicable health and safety laws that may expose directors to liability, for example, failing to ensure the welfare at work of employees
- Applicable environmental laws such as how the company deals with waste.

Breaches of these laws may expose directors to civil, regulatory and criminal liability.

Manslaughter

Be aware that directors can, in certain circumstances in some jurisdictions, be convicted of manslaughter if death is caused as a result of their negligence.

Cartels/Competition

Individual directors who are found guilty of engaging in dishonest anti-competitive conduct can be personally fined, disqualified and even subjected to imprisonment.

Money Laundering

Most jurisdictions have money laundering laws. Directors carrying out relevant financial business must:

- be aware of the requirements of applicable laws and regulations
- ensure internal processes are in place to identify, record/report on this issue
- provide proper training.

Extradition

A number of jurisdictions have legislation providing for the extradition of individuals.

This checklist has been designed as a practical guide to the potential duties and liabilities of directors of companies. It is a general non-exhaustive checklist and is not jurisdiction-specific. It should not be used as a substitute for professional advice on issues within your jurisdiction and should not be taken as providing legal advice on any of the topics addressed.