

General Duties of Directors

The general duties which directors owe to the company in the performance of their role include:

1. Compliance with legislation

Directors must ensure compliance by the company with the Companies Act. A breach of this duty will not invalidate any contract or agreement or affect its enforceability, other than by the director in breach. This is without prejudice to the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit from such a breach.

2. Interests of members and employees

Directors must take into account the interests of the members of the company and have regard to the interests of the employees in the performance of their functions however it is worth noting that this duty is owed by the directors to the company, not to the members or employees.

3. Compliance statement

Directors are required to acknowledge the existence of their duties by signing a declaration to that effect in the form of a compliance statement. Directors of all public limited companies and of private companies which meet certain financial thresholds will be required to include a directors' compliance statement in their directors' report (or explain why not).

4. Appointment of company secretary

There is an obligation on directors to ensure that the company secretary is suitably qualified for the role. In appointing a company secretary, the directors shall have a duty to ensure that he or she has the skills necessary to enable him or her to maintain (or procure the maintenance of) the records of the company (other than accounting records) necessary under the Companies Act.

5. Directors' duty to disclose any interests in contracts made by the company

A director who is, in any way, directly or indirectly interested in a contract or proposed contract to which his or her company is a party, shall have a duty to disclose the nature of that interest at a meeting of the directors. This is, in the main, a restatement of the existing law.

6. Breach of duty: liability to account and indemnify

The Companies Act provides that breaches of certain director duties will result in the director who is in breach being liable to account to the company for any gain made by him or her and to indemnify the company against any loss made by it as a result of any such breach.

Fiduciary Duties of Directors

The eight principal fiduciary duties of directors are set out at section 228 of the Companies Act:

1) Act in good faith

Each director is obliged to act in good faith in what the director considers to be the best interests of the company. This is a subjective test and recognises that two directors can have two different but equally legitimate opinions as to what constitutes the best interests of the company.

2) Act honestly and responsibly

Directors must act honestly and responsibly in relation to the conduct of the affairs of the company. While this was not a common law duty, it was deliberated on by the courts on numerous occasions in the context of imposing restrictions on directors.

3) Act within powers

Directors must act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law.

4) Use of company property

A director is not permitted to use the company's property, information or opportunities for his or her own or anyone else's benefit unless this is expressly permitted by the company's constitution or the use has been approved by a resolution of the company in general meeting.

5) Independent judgment

A director shall not agree to restrict his or her power to exercise independent judgment unless this is expressly permitted by the company's constitution; or the director believes, in good faith, that to fetter his or her discretion is in the best interests of the company.

6) Avoid conflicting interests

A director is obliged to avoid any conflict which may arise between the duties the director owes to the company and the director's other (including personal) interests, unless the director is released from his or her personal duty to the company in relation to the matter concerned by virtue of either the provisions of the company's constitution or by a resolution in a general meeting.

7) Due care, skill and diligence

A director must exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having the knowledge and experience that may reasonably be expected of a person in the same position as the director; and who also possesses the equivalent level of knowledge and experience which the director has. This sets a quasi-objective standard by which a director should be judged. While it does use the 'reasonable man' test, that man is taken to be a person with the director's knowledge and experience.

8) Regard to members' interests

In addition to the general duty as referred to above, directors have a fiduciary duty to have regard to the interests of the members of the company.

Breach of Duties

As in the case of a breach by directors of their general duties, a breach of any of the fiduciary duties will not invalidate the validity of any contract or transaction or its enforceability, other than by the director in breach. However this is without prejudice to the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit from the breach in question.

Where an officer of the company is shown to have acted honestly and reasonably the court may grant relief to that officer in any proceedings for negligence, default, breach of duty or breach of trust. Likewise a court may grant relief where an officer has acted honestly and reasonably in relation to any anticipated future claim for negligence, default, breach of duty or breach of trust.

While providing welcome clarification, the Companies Act does not displace the importance of case law relating to existing common law rules and equitable principles and section 227 reiterates that regard shall be had to the corresponding common law rules and equitable principles in interpreting the duties and applying the new provisions.

General Responsibilities of Board

The responsibilities of the Board of Directors include the following:

- 1) Creating a clear, shared vision and maintaining a clear sense of focus on it.
- 2) Providing leadership for the organisation.
- 3) Making sure the organisation does not stray from its purpose.
- 4) Formulating policies and plans to bring about the organisation's objectives.
- 5) Ensuring accountability to stakeholders.
- 6) Ensuring limited resources such as the finances are managed effectively.
- 7) Recruiting and supervising the most senior member of staff (if any).
- 8) Ensuring an ethos of equality in all that the organisation does.
- 9) Ensuring that the organisation complies with all relevant policy and legal requirements.
- 10) Overseeing the assessment and management of risks to the organisation.
- 11) Recruiting and inducting new committee/ board members.

The specific responsibilities of company directors include:

- 1) Running the financial affairs of the organisation in a manner that avoids fraudulent or reckless trading, which may lead to the directors being personally liable for company debts and may result in their likely disqualification from holding directorships for an extended period.

- 2) Exercising their powers in the best interests of the members and not in a manner that is oppressive to any member of the company, or in disregard of the interests of any member of the company.
- 3) Complying with the organisation's memorandum and articles of association.
- 4) Complying with the Companies Act.

Annual compliance checklist for board of directors

1. It is good practice for directors to complete and sign a checklist at their last meeting prior to the organisation's annual general meeting (AGM). If certain duties are not ticked, remedial action must be taken!
2. The company is solvent (that is, it can meet its debts as they fall due).
3. Proper books of accounts are being maintained.
4. Annual end of year accounts have been prepared and signed off.
5. Audit of the end of year accounts has been prepared.
6. Proper general meeting(s) of the company have been held.
7. Minute book contains proper minutes of all meetings held.
8. Register of directors is up-to-date.
9. Register of members is up-to-date.
10. Annual return (form B1) has been filed.
11. All forms dealing with officer change (B10) have been filed.
12. All other necessary documents have been filed.
13. Current health and safety statement is in place.

Financial Responsibilities

The Board of Directors

- holds the assets of Arlington Novas Ireland CLG on trust for the beneficiaries of the charity, and manages them on behalf of funders, ensuring that they are used to achieve the objects for which Arlington Novas Ireland CLG is established
- approves all financial management and control policies and procedures
- approves any changes in bank signatories
- approves the annual budget for the charity
- monitors financial outcomes
- determines policies for loans and investments
- approves general arrangements for risk management
- approves the annual audited financial statements for presentation to the Annual General Meeting
- approves appointment and pay and conditions of all positions in Senior Management team and above
- approves property purchases and items of capital expenditure over €100,000
- agrees and monitors implementation of the reserves policy
- considers the appointment of the external auditor and the audit fee.

The Chief Executive

- is accountable to the Board for the financial activities of Arlington Novas Ireland CLG
- ensures that accurate and timely financial information is presented to the Board
- with the Head of Finance, keeps abreast of any changes in financial legislation and regulations affecting Arlington Novas Ireland CLG, in particular in relation to charity and company law
- directs and co-ordinates financial strategies and plans, linking these to the annual strategic plan
- ensures that the financial policies and procedures approved by the Board are implemented
- with the Senior Management Team, formulates the annual budget for consideration by the Board
- with the Senior Management Team, monitors financial outcomes against budgets
- with the Senior Management Team, reviews and updates the charity's risk assessment annually

The Head of Finance

- attends Board meetings and advises on financial matters
- ensures that accurate and timely financial information is presented to the managers, CEO and Board
- advises the CEO and Board on all financial management policies, procedures and systems, and ensures they are operating correctly on a day-to-day basis
- with the Senior Management Team, formulates the annual budget for consideration by the Board
- with the Senior Management Team, monitors financial outcomes against budgets on a monthly basis
- monitors cash flow and alerts the CEO and Board if reserves in the company fall below the level necessary to comply with the Reserves policy and legal obligations
- monitors cheques and EFT processes to ensure they are authorised by the correct signatories
- manages investments in consultation with the CEO
- prepares draft annual accounts
- liaises with the external auditors to provide all information and documentation necessary for the audit of the financial statements
- ensures that all statutory financial returns are completed and filed by the due dates
- informs the CEO and Board of any changes in financial legislation and regulations affecting Arlington Novas Ireland CLG, in particular in relation to charity and company law.

The Senior Management Team

- monitors spending with regard to their own areas of responsibility, and reports any significant variances to the CEO and Head of Finance
- ensures that sufficient funds are available before any liabilities are incurred
- ensures all financial activities within their area of responsibility comply with approved policies and procedures

All staff

- monitor spending within budget limits with regard to their own budget responsibilities on an ongoing basis and report any issues to the CEO, Head of Finance or Senior Management Team
- must be satisfied that they have the necessary authority before committing Arlington Novas Ireland CLG to any expenditure on goods or services or to any financial liability.