

ON-BOARD: THE ROLE AND DUTIES OF DIRECTORS

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Bermuda's vibrant business platform can present many opportunities for individuals to become a director of a Bermuda company.

Doing so can be a rewarding experience and, in addition to remunerative benefits, can provide corporate and leadership experience as well as networking opportunities.

However, joining a board of directors includes a considerable level of responsibility and commitment. Not only will you need to consider whether you fulfil the criteria to act as a director, you must also think carefully about your role and the duties involved in taking on that role.

Bermuda companies act through two separate arms – its shareholders and its board of directors. Shareholders make the financial investment into the company and in return are afforded certain rights of ownership and control that include the appointment of directors. To be eligible for appointment as a director of a Bermuda company you must be at least 16 years of age and not be an undischarged bankrupt (unless permitted by the Bermuda court). Provided the Bermuda company fulfils the requirement to have at least one officer that is ordinarily resident in Bermuda, you can be of any nationality and live anywhere in the world. In addition, you do not have to be a shareholder or employee of the company.

In general, the board of directors are appointed to manage the business and affairs of the company; they make operational decisions relating to the overall long term aims and interests of the company and are responsible for ensuring that the company meets all of its applicable statutory requirements. The board of directors are the company's agents who act in furtherance of the company's business and exercise certain powers for that purpose (subject to any limitations that may be imposed by the shareholders).

Although some powers may be delegated to you as a director or to a specific committee of the board, the directors of a company are expected to act as a whole. As a part of this collective, your role as a director will be to actively participate in board meetings and make considered and independent decisions that you consider, in good faith, fulfil the obligations of the company, are consistent with the company's goals and would most likely contribute to the success of the company.

The extent of your authority as a director will be embedded in the company's constitution so it is important that you review the relevant company documents, primarily the bye-laws, to determine the scope of your specific powers that permit you to act on behalf of the company. In addition, there are standard statutory and fiduciary duties of skill and care that are owed to all companies. Every director of a company in exercising their powers and discharging their duties must act honestly and in good faith with a view to the best interests of the company and must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Your skill as a director is set to both an objective and subjective standard; you must exercise the same skill and diligence that would be expected of a reasonably diligent person with (a) the knowledge, skill and experience that is reasonably expected of a person attending to the same tasks as you in relation to the company and (b) the general knowledge, skill and experience that you actually hold. This can mean that more may be expected from directors who have specialist knowledge or qualifications. However, it is important to remember that, even without any executive or specialist qualifications, you must demonstrate reasonable and prudent care.

Further, situations in which you have, or could potentially have, a personal interest that conflicts with the interests of the company should be avoided. Examples of circumstances that give rise to a conflict of interest can include also acting as a professional advisor to the company, being a shareholder of the company or being on the board of directors of a major shareholder of the company. The duty to avoid a conflict of interest can be managed by fully disclosing in writing to the board of directors any personal interests relating to certain transactions and material contracts.

The role of a director and the duties that each director must carry out for the benefit of a company can be challenging. When considering whether to make a commitment of service as a director, you should consider whether you are willing and prepared to take on the additional responsibility.

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