

information sheet 2.8

Role of the company director

This information sheet is aimed at the committee members of an organisation which is (or is thinking about becoming) a company limited by guarantee. It gives a brief introduction to companies and explains the role of company directors

Why become a company?

The law only recognises individuals and companies. There is no separate legal status for organisations which are not companies.

This means that if your organisation is not registered as a company, it is legally seen as a collection of individuals.

Any contracts will have to be signed and agreed by individuals rather than by the organisation itself and everyone is individually responsible for what the organisation does.

This applies equally to large registered charities and to small community groups, which are all known as **unincorporated associations**.

If you register as a company, the organisation gets a legal identity separate to that of the members and you become an incorporated association.

Documents are then signed in the name of the company. In most cases, the directors have limited liability for the debts of the company. If someone wants to sue then they sue the company not an individual member(s).

Voluntary organisations and charities often become companies when

- they regularly enter into commercial contracts
- they own or lease a building or employ a large number of staff
- the charity needs a separate legal identity to take on legal responsibilities
- they deliver charitable services under contractual agreements

and they have large potential liabilities.

Limited by guarantee or by shares?

There are two main types of company. Firstly, **companies limited by share** where the members are anyone who has bought shares in them. Any profit or loss you make is limited by the number of shares you own.

Secondly, **companies limited by guarantee**. Here the company membership is based on the same membership as your current organisation and every member has a single vote. Members guarantee that they will pay a nominal amount (usually anything from one to ten pounds) to meet any debts if the company is wound up. They do not make a profit from their membership

Guarantee companies can still be run democratically, for the public benefit and on a not for profit basis and it is the model most used by charities.

Who are the company directors?

A charitable company operates in similar way to any other voluntary or community organisation. It has a committee elected by the membership with a number of officers – chair, treasurer and secretary.

In a charity, members of the committee are known as trustees. In a company, committee members are known as directors. In a charitable company they are both trustees and directors.



The duties of company directors

Charitable companies must have at least three directors or trustees. The duties of company directors are very similar to those of charity trustees. They include:

1. acting in good faith and in the best interests of the company's members and the organisation's beneficiaries
2. taking the same degree of care in managing the company's finances, assets and affairs as a reasonably prudent business person would take in respect of their own business. This includes taking professional advice when needed and making decisions as a body

3. keeping the account books in such a way that they can be audited or examined each year
4. arranging for an independent audit, if required, and presenting the audited accounts and financial statements to the members at each annual general meeting
5. producing an annual report and filing the annual accounts and annual returns each year at Companies House and the Charity Commission (if registered). *NB filing the accounts late can result in an automatic fine of at least £100*
6. supervising and managing the company's employees and voluntary workers properly, and making sure they give regular reports on their work to the directors
7. complying with employment and health and safety law, and making sure the organisation is properly insured, accountable to funders and has plans and strategies in place for its work
8. filing the accounts with Companies House and the Charity Commission within ten months after each year end
9. maintaining the **statutory books**:
 - the Register of Members,
 - the Register of Directors and Company Secretaries
 - the Register of Charges (secured loans made to the company)
 - Minute books for general and board meetings

10. keeping proper minutes of meetings, both general meetings and directors' meetings
11. making sure that company law is complied with when giving notice of and holding meetings
12. notifying Companies House of changes in directors or company secretaries within 15 days after each change

Company secretary

By law, every company must have a company secretary (or two people acting as joint secretary). This person can also be director but does not have to be. Their role is to carry out the administrative functions required by the Companies Act and to sign official forms requiring the secretary's signature.

They must **advise** the board of directors of their legal and administrative duties and carry out tasks **at the request** of the board. It is a different role to the committee secretary and they do not, for example, have to take the minutes or do all of the typing

Although secretaries can delegate most of their functions to paid or unpaid staff, they cannot delegate the signing of forms. Company secretaries perform the following main duties. In some cases the company secretary may be personally fined if the action is not carried out in full and on time.

The company secretary must ensure that:

- the company nameplate is displayed outside the companies registered office

- all the company stationery includes all the information required by law including the company number and, if registered, the charity number
- the certificate of incorporation, company seal and memorandum and articles are kept in a safe place
- details of all directors are sent to Companies House and that they are notified of any changes within fifteen days
- the company has all the necessary statutory books and register
- accounts are prepared
- an auditor or independent examiner is appointed, as required
- an annual report is produced
- the annual report and accounts are sent out in time, to all company members, in advance of the AGM
- proper minutes are taken at all meetings, recorded or stapled in to the minutes books and signed
- the annual report and accounts are sent to Companies House within the specified time limits (within ten months of the end of your registered accounting year)
- the register of members, directories and company secretaries is kept up to date
- records of lapsed members are kept for a minimum of six years

Company members and directors protection from personal liability

The ordinary members of a company – that is, those who have signed guarantees - will only be liable for the maximum amount they have guaranteed if the company goes into insolvent liquidation.

The directors also have limited liability but they can be made liable for a company's losses or debts in a number of ways:

1. dishonestly dealing with the company's property or money
2. cheating the company's creditors or clients (1 and 2 are known as **fraudulent trading**)
3. negligent actions or decisions (or negligent failures to act or take decisions) which lose the company's money or assets
4. carrying on activities which are not permitted by the company's objects or powers clauses and cost the company money or waste its resources (known as committing **ultra vires** acts)
5. carrying on the company's business and running up further debts when it has become obvious that the company is in financial difficulties and should be wound up as soon as possible (known as **wrongful trading**)
6. signing a form or agreement to act as a personal guarantor for a debt owed by the company.

7. acting while disqualified as a director or charity trustee
8. if directors use their position as directors for secret personal gain, then they may be made to repay to the company the profits made from this abuse of power

For more information about becoming a company and/or a charity see VODA information sheets:

- 1.2 *Registering as a charity and*
- 1.3 *Becoming a charitable company*

If you copy this information sheet, please acknowledge North Tyneside VODA and make sure you have the latest version

North Tyneside VODA

The Shiremoor Centre
Earsdon Road
Shiremoor
NE27 OHJ

0191 200 8555 (voice)
0191 200 8556 (fax)

advice@voda.org.uk

www.voda.org.uk

Charity number 1075060

July 2005/info2.08