Shadow Directors
Guidance for active shareholders and managers

Shadow directorships

Few people know what a shadow directorship actually is, but the chances are that active shareholders, active board advisers and interim managers are just the sort of people who would benefit from being in the know.

What is a shadow directorship?

A “shadow director”, according to law, is a person in accordance with whose directions or instructions the directors of a UK limited company are accustomed to act. In short, a shadow director is anyone who is directly calling the shots at a company or an area within the company. However, a person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity.

Why should you be concerned about being a shadow director?

A shadow director is treated in many ways as a real director of the company concerned and so will be bound by the same duties and obligations. However, in most cases the shadow director is unaware of his/her need to comply with the laws relating to directors and accordingly takes no protective action. Furthermore, the shadow director may not be covered by the company's directors' and officers' liability insurance (if any).

Forewarned is Forearmed

It is relatively simple to avoid being a shadow director, but it is worth doing as the consequences for not doing so could expose the unwitting shadow director to:

- a liability to contribute to the company's assets following the company's insolvency;
- being disqualified from being a director following the company's insolvency;
- criminal sanctions for breaches of directors’ duties; and
- personal liability for breaches of directors’ duties.

What should I be doing?

The simple solution is to make sure you know where you stand. Are you a manager or are you really a director? Remember a director is someone who directs the operations of the company, not just someone who attends board meetings.

If you know you are a director, even if not in name, then you should insist on being covered by all relevant insurances and you should make sure you know your legal duties. In the unlikely event that you are an undischarged bankrupt or have been disqualified from being a director, then it is a criminal offence to act even as a shadow director. Keystone Law has produced a free guide to the duties of company directors and a copy is available on request.
If you know you are not a director (and do not want to risk being a shadow director), then make sure you don’t behave like a director. Accordingly only operate within the authority given to you by the board, refer all significant matters back to the board and let the board decide. If you attend the board meeting, then do so only to advise and not direct the board. The minutes should record this and also show you as “in attendance”, not “present”. Keep a copy of these minutes.

Conclusion

If you don’t know about shadow directorships you might face serious personal consequences. By being informed and by making sure the board makes up its own mind you can easily avoid these issues.

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Disclaimer

We have written these materials to help you, but no article can address all the issues. The benefit of using an experienced lawyer is that they ask the right questions and build the solution around you. Please therefore note that these materials only provide you with general information and should not be regarded as a substitute for taking legal advice.

Would you like to know more?

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