

# **Directors' Duties and Responsibilities**



# Introduction

FirstPort Limited is the UK's leading residential property services provider. We undertake our responsibilities with a high standard of care to ensure the work we do for you exceeds your expectations. We also ensure the suppliers we select to undertake any works on your development meet the required standards of legislative framework governing residential property management.

This document summarises the key legal and regulatory requirements and the key director's duties under the Companies Act 2006 which you should be aware of as a director of a Right to Manage Company (RTM) or a Resident Management Company (RMC). Please note the information contained in this guide is for informational purposes only and should not be construed as legal advice. If you do need specialist help, you will need to seek independent legal advice.

## Who is required to comply?

As a director of an RTM or an RMC, you will be accountable to comply with the legal and regulatory requirements imposed on a director by the Companies Act 2006 in relation to the running and management of the RTM or RMC. Although these duties and responsibilities do not fall on the managing agent, there are several ways a managing agent can assist with ensuring you are compliant with your duties and responsibilities.

## We can help you to meet your legal and regulatory obligations

Legal and regulatory obligations should never be ignored or dismissed as there may be serious consequences for non-compliance. If a director is found to be non-compliant, they could potentially face one or more of the following sanctions:

- personal fines
- disqualifications
- and/or imprisonment

We are here to help support you to meet your duties and responsibilities.

We are committed to high standards in legal and regulatory performance and have a range of professionally qualified teams:

- In-house legal and compliance.
- Company secretarial function - for your statutory filing requirements.
- Procurement - to ensure all our suppliers are fully compliant and accredited and will adhere to the necessary regulatory requirements (including Health and Safety and financial risks through the supply chain).
- Health & Safety - who have been awarded 5 stars, by the British Safety Council, for our high standards in health and safety management.
- Surveying - who are experienced in dealing with major projects.

# The Legal and Regulatory Obligations

The Companies Act 2006 sets out the duties required of directors. These also apply to a director of an RTM and RMC.

In summary, these are:

- **To act within powers** - A director must act in accordance with the company's constitution and only exercise powers for the purpose they were given.
- **To promote the success of the company** - A director must act in the way they consider to be in good faith and to promote the success of the company for the benefit of its members as a whole.
- **To exercise independent judgment** - A director must exercise independent judgment and make their own decisions.
- **To exercise reasonable care, skill, and diligence** - A director must exercise the same care, skill and diligence that would be exercised by a reasonably diligent person.
- **To avoid conflicts of interest** - A director must avoid a situation which may conflict with the interests of the company.
- **Not to accept benefits from third parties** - A director must not accept a benefit from a third party unless permitted in the articles or approved or ratified by the company.
- **To declare an interest in a proposed transaction or arrangement** - If a director, is in any way, interested in a transaction or arrangement with the company, they must declare the nature and extend of that interest to other directors.

## Other Statutory Obligations

The Companies Act 2006, along with other legislation and key regulations, imposes additional duties for directors. Some arise from the responsibility of directors to ensure that the company carries out its obligations such as, the duty to keep the statutory books up to date or the duty to file returns. Other responsibilities are personal to the directors.

The liability for breach of these duties usually attaches to the company and to all defaulting directors. Potential penalties depend on the obligations breached but can range from a fine to imprisonment.

In addition to the Companies Act 2006, there are other regulations and legislation which also impose obligations on directors, where the breach of such could lead to criminal and civil liability.

Some of these are:

- **The Insolvency Act 1986**

This is where a director continues to trade when they knew or ought to have known that there was no reasonable prospect of the company avoiding insolvent liquidation, or if a director knowingly continues to carry on business with the intention of defrauding creditors in the knowledge that there was no reasonable prospect of the creditors being paid by the company.

- **Health and Safety legislation**

This is where directors need to ensure that their homes, managed by the RMC or RTM Company, have all the appropriate health and safety measures in place, including fire safety. FirstPort has a centralised Health & Safety team, which actively ensures compliance with Health & Safety legislation.

- **Environmental legislation**

This is where, if a director contributed to a breach through consent or neglect, they could be held liable. A director should ensure their suppliers have the right environmental certificates if they are doing any such works that are likely to cause an environmental hazard. For example, the removal of Japanese knotweed can only be undertaken by a company registered with the Environmental Agency.

- **The Company Directors Disqualification Act 1986 (CDDA 1986)**

If a director continues to act as a director while they are disqualified, there are both civil and criminal sanctions.

- **Modern Slavery Act 2015**

While your company may not qualify for publishing an annual modern slavery statement (as you will not meet the turnover threshold of £36 million per annum), you must still not engage in trafficking people to work for you, exploiting trafficked people, or exploit your workers in any way and this includes the suppliers you wish to use on your development.

- **The Bribery act 2010**

It is illegal to offer, give, ask for, or take a bribe of any kind, regardless of what form it takes (money, favours, gifts, or entertainment) or for any reason (such as in return for a commercial advantage from any of your suppliers, third parties or government officials).

- **The Criminal Finance Act 2017**

Ensure that your company pays all taxes that it owes, and that it does so in the timescales provided for by legislation and that you ensure your suppliers do the same.

- **The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) and The Money Laundering and Terrorist Financing (Amendment) Regulations 2019**

You may not process criminal money (including the proceeds of criminal activity) through your business or allow other people to do so. This may also include the suppliers you instruct.

- **Data Protection Act 2018**

The DPA 2018 sets out the data protection framework in the UK and should be read alongside the UK General Data Protection Regulation (UKGDPR).

## **What are the consequences of breaching any of the legislation listed above?**

Statutory directors, including being a director of a RTM or RMC can be liable for large fines, disqualification and/or imprisonment if found breaching their duties. The company can also be fined high sums based on its annual turnover.

## **What we can do to help you avoid breaching any of the legislation listed above?**

We can assist with arranging for all your statutory filings to be completed and filed within the required timescales stipulated through our company secretarial team.

When our Procurement team select suppliers, we will ensure they meet our accreditation levels and only when this has been met will we instruct them to carry out works on your development.

If a director chooses to use their own supplier at the development, and this supplier is not a FirstPort approved supplier and has not met our standards and accreditation, the director runs the risk of not meeting their obligations if the supplier is found to be in breach of any of the obligations mentioned in this guidance note.

## **Instructing and Managing Suppliers**

Any supplier or self-employed person instructed by a director would need to adhere to several laws and regulations. At FirstPort, we have our supplier onboarding process which can help demonstrate that any chosen contractor is competent to carry out the works instructed and is well governed. Therefore, if there is a breach for whatever reason, we can mitigate any risk as the correct process was followed during the supplier onboarding process. It is your responsibility to ensure you have a policy or procedure in place to ensure your chosen contractor does not breach any laws or regulations. We always recommend that you speak to your Property or Development Manager before engaging with any non-FirstPort approved supplier. In the unlikely event of a breach, you will need to be able to demonstrate that you took all reasonable steps to mitigate any risks to the RTM or RMC.

## **What are the consequences if you or a supplier fails to comply with the legislation?**

Failure to adhere to the regulatory requirements can result in civil and criminal action against the directors, suppliers, and the company. It is important to show that you have done what is reasonably practicable to ensure you are managing and governing your company properly.

## What can we do to help?

FirstPort encourages the use of preferred suppliers, who we have checked to ensure that they have the competencies and capacity to meet our requirements and at competitive rates. All preferred suppliers have signed a framework agreement in which they have agreed to terms such as set rates, SLAs, KPIs and Ts&Cs, allowing us to performance manage the suppliers and ensure the best value for money for our customers.

As part of our onboarding process, we ask every supplier to provide the following documentation:

- H&S Policy.
- Risk assessments in relation to the works they carry out.
- Method statements in relation the works they carry out.
- Health and Safety and Trade accreditations in relation to the works they carry out (we have set list of requirements for each trade).
- Public Liability insurance (minimum of £5million limit).
- Employers' liability (minimum of £5million limit).

If a supplier carries out high risk works such as working at height or hot works, we also ask for:

- Risk assessment and method statements for these specific works.
- An insurance document confirming that they are insured to carry out these type of works.

We also provide and review information from the contractor to ensure compliance with the Construction Design and Management (CDM) regulations, which include all maintenance, repair and building activities.

Suppliers appointed by FirstPort will not undertake any works unless they are approved by our onboarding process and Purchase Order process, which ensures any works are covered by our contractual terms and conditions and specification of works. This process ensures that we accurately track costs and meet the necessary standards and are able to track the progress of works from start to finish.

Suppliers appointed by us have to follow our Code of Business Conduct, which is our code of ethical practices, when dealing with our customers. We also ensure that our suppliers do not receive any commissions or kickbacks, and that they do not outsource any works contracted to them.

## What to check if using a contractor not already approved by us

If you would prefer to use a supplier that has not been approved by FirstPort, you will need to check that they comply with the following:

- Health and Safety Regulations
- Bribery Act 2010
- Criminal Finances Act 2017
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) and The Money Laundering and Terrorist Financing (Amendment) Regulations 2019
- Data Protection Act 2018
- Modern Slavery Act 2015
- National Minimum Wage Act 1998
- Human Rights Act 1998
- Companies Act 2006

In addition to the above, you will need to check they have the relevant insurances in place. We suggest Public Liability Insurance to cover at least £5 million and Employers Liability to cover at least £5 million.

### IMPORTANT NOTICE

If you insist on using your own supplier against the advice of FirstPort, you accept full responsibility as the RTM or RMC director and will take full responsibility if the supplier is found to be in breach of any regulatory requirement that needs to be adhering to.

Our professional advice is that for all mandatory categories of services (as defined by FirstPort's supplier accreditation process) to your development i.e. lifts, gates, asbestos or fire safety, you should use FirstPort's preferred and fully accredited suppliers. These suppliers will need to certify all maintenance works in accordance with the statutory requirements.

### Summary

We understand that your development is part of your home but as a director of the RTM or RMC, you also have duties as stated in this guidance that you need to comply with. If suppliers are not properly accredited and later found to be in breach, or your statutory filings are not made on time, as the director of the RTM or RMC you could be held liable.

Working together we can help prevent this from happening by making sure only accredited suppliers work on your development and all your statutory filings are made on time.

If this document has raised any additional questions or queries you would like to explore further, please contact your Property/Development Manager, who will be pleased to assist in the first instance. They have access to our in-house team of people, who are always happy to assist with more complex questions.

