

NEWSLETTER

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This newsletter covers the topic of directors duties and liabilities in **China**.

Introduction

The scope of a director's duties and liabilities is governed principally by the Company Law of the People's Republic of China (the "Companies Law") as well as the internal rules of the company which are contained within its articles of association.

Unlike the common divide between executive and non-executive directors, a Chinese company is comprised of the following managerial positions to whom the duties and liabilities contained within the Companies Law equally apply:

1. Executive director

This is the chairman of the board of directors who has overall responsibility for the formulation of the company's annual budget, business plans, general strategy and coordination of directors/shareholders meetings for the company.

2. Board director

This is a director who forms part of the board of the company and is answerable to the executive director of the company.

3. General manager

This individual puts the executive director/board of directors budget and plans into effect and supervises the day-to-day business operations of the company.

4. Legal representative

This individual is in charge of the corporate seal of the company and is a key point of contact between a company and the governmental authorities.

("these positions shall be collectively referred to as "Director")

It is common in a smaller enterprise for the same individual to occupy all four of the above positions in the company.

We will now consider the various duties and liabilities placed upon Directors under the Companies Law.

A. Liabilities affecting a Director

The key areas of liability regulated under the Companies Law concern the following matters:

1. Actions taken with respect to company funds

Where a Director misappropriates and/or diverts company funds to either him/herself or a connected person then he or she will be in breach of the Companies Law.

2. Contracts and opportunities

A Director is not permitted to take advantage of any business opportunity which comes to his attention by virtue of his position within the company. In addition, a Director is not permitted to contract with the company either personally or via another company.

Liability can be avoided in these matters by first obtaining shareholder consent to the above actions in advance.

3. Confidentiality

As part of a Director's duty of loyalty and fidelity to his or her company, all company information must be treated with the utmost confidence. A Director disclosing confidential company information shall be in breach of the Companies Law.

B. Penalties for committing liabilities

Where a Director infringes any of the above rules contained within the Companies Law, he or she is answerable first and foremost to the company itself.

It is incumbent upon the shareholders of the company to bring an action within the People's Court against the Directors and the Directors shall be financially liable for any financial losses caused to the company through their actions.

There is no maximum on the level of financial penalty imposed upon a Director. On the other hand, a Director is not liable for imprisonment for breach of the any of the above duties.



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