

## **Punishments for Directors of Companies: Prison, Fines & Liabilities**

**Ferdinand D. Adadzi<sup>i</sup>**



### **Introduction**

You are a director of a company incorporated in Ghana. Do you know you can go to prison for acts or omissions as a director or be fined? This question never or hardly crosses the mind of anyone when approached with the request to act as a director of a company. Not only is it possible for you to be convicted and sent to jail as a director, but fines can be imposed on you as a director, or you may incur other civil liabilities for your acts or omissions as a director. Therefore, one must understand the duties imposed on him or her as a director and intend to undertake those duties diligently before accepting a board appointment. This article draws attention to the punishments imposed on directors for acts or omissions that the law requires directors to do or not to do respectively.

### **Appointing a Director**

Directors are persons appointed to administer the business of a company or a corporation. For a company limited by guarantee, the directors may be referred to as members of the board of trustees, council members or any other designation. In many instances, persons are approached to be appointed as directors of companies based on some relationship they may have with shareholders or members of the companies or existing directors. A shareholder may choose to appoint a spouse, relative, friend or business associate as a director. The position of a director is rarely advertised with qualification criteria for interested persons to apply. In a few instances, a more formal process is resorted to by engaging recruitment agencies who headhunt suitable candidates.

One reason for this manner of appointing directors is that being a director is not a salaried position or position of employment. A director is not an employee of the company and is not

entitled, as of right, to remuneration. Any payment is at the discretion of the shareholders of the company, who may determine how much to pay directors by ordinary resolution. The position is different for executive directors, who, in addition to being directors, are employees of the company and must be paid as employees.

### **Play the Role**

Once a person is appointed a director, irrespective of the relationship with the shareholders, one must dutifully discharge the responsibilities imposed under the law and the company's constitution. In many cases, especially for small and medium-scale enterprises, the appointed director sees the appointment to the position as a favour done him or her. The appointed director, therefore, acts on the instruction of the shareholder or does nothing. A spouse, relative or friend appointed as a director may never know the exact scope of the business of the company nor know the composition of the management team, see the financial statements or interrogate them, or participate in the development of the company's strategy for the company, or attempt to hold the managing director accountable, and, in extreme cases, never actually have anything to do with the business of the company. Further, a possibly worse scenario is that the appointed director may not even be aware of the obligations and duties imposed on him or her as a director. Before 2019, there was no mandatory requirement for the board to have a meeting, so directors may not even meet. The shareholder, who is also a director and manager, may only request the appointed director to sign documents when required by law.

Directors are the brain of the company. Individually, they are officers of the company and, together, constitute a principal organ of the company. As such, the act of the board is the automatic act of the company. The primary responsibility of directors is to administer the business of the company. Directors cannot, intentionally or unintentionally, choose not to administer the business of the company. The law imposes obligations on the directors in administering the business of the company. Failure to administer the business of the company or administering the business of the company in breach of the requirements of law and the constitutions of the company attracts penalties in the form of criminal and civil liabilities.

### **Duties, Breach and Punishments**

The law requires all directors to act in the best interest of the company. Acts or omissions that are not in the best interest of the company will amount to a breach of this duty. In acting in the best interest of the company, the law requires, among other things, that directors exercise due care and diligence, exercise independent judgment, and avoid conflict of interest and duty. This piece does not discuss the exact scope of the duties imposed on directors. Therefore, the first step for any person appointed as a director is to be familiar with the company's business, the requirements of the constitution of the company, and the obligations and duties imposed by law.

Where a director acts contrary to the above requirements, the director has breached the duties imposed and is likely to incur criminal or civil liabilities depending on the exact nature of the breach. The civil duties imposed on directors include:

- (a) Compensating the company for the loss sustained as a result of the breach by the director. A friend or relative appointed as a director who fails or neglects to participate in the administration of the business resulting in a loss to the company can therefore be required to pay monetary compensation to the company.
- (b) Recovery of benefits accruing to the director as a result of the breach. A director who receives benefits in breach of his or her duties to the company must account to the company for the benefit. The company can, thus, recover property, money or benefits received by the director.
- (c) Termination of contracts with the director. Where a director enters into a contract with the company in breach of duties imposed on him, the company is entitled to rescind the contract.

The law requires the company to comply with several legal requirements. As the company is an artificial person, the law requires such responsibilities to be discharged by the directors as officers of the company. Failure of the directors to discharge such obligations on behalf of the company attracts criminal sanctions in the form of a fine or terms of imprisonment. Examples may be illustrative.

- (a) Where a company changes its authorised business but fails to give the required notice to the Registrar, directors may be liable to pay a fine of GH¢600 to the Registrar.
- (b) Where a company fails to enter in a register of members the particulars of members and beneficial owners and submit particulars to the Registrar on beneficial owners, directors may be liable to pay a fine of GH¢300 for each day for the period of the default to the Registrar.
- (c) Where a company engages in certain prohibited transactions in shares, directors may be liable to pay a fine of GH¢6,000 to the Registrar.
- (d) Where a company raises additional capital, thereby increasing its stated capital, but fails to deliver required particulars to the Registrar, the directors may be liable to pay a fine of GH¢300 for each day for the period of default to the Registrar.
- (e) Where a company fails to have its name fixed or painted on its office(s), directors may be liable to pay a fine of GH¢3,000 to the Registrar.
- (f) Where a company fails to submit its annual returns to the Registrar, the directors may be liable to pay a fine of GH¢300 for each day for the period of default to the Registrar.
- (g) Where a director fails to take reasonable steps to ensure the company complies with the requirements of annual returns and accounts, the director is liable on conviction to pay a fine of GH¢5,000 or a term of imprisonment for up to two years or both a fine and imprisonment.



- (h) A director who swears to an affidavit of solvency without reasonable ground is liable on conviction to pay a fine of GH¢300 or a term of imprisonment of up to six months or both.
- (i) A director who also fails to report his disqualification after being appointed a director is liable on conviction to pay a fine of GH¢12,000 or a term of imprisonment between two to five years, or both a fine and term of imprisonment.
- (j) A director who causes a company to engage in a business or trade or incur debt or liability leading to the insolvency of the company commits an offence and is liable on summary conviction to a fine of GH¢6,000 to GH¢12,000 or to a term of imprisonment of two to five years, or both a fine and term of imprisonment.



The above illustrates a few instances under the Companies Act where a director may suffer criminal liability or administrative penalties. Persons appointed directors should, therefore, not take responsibility with a disinterested attitude. There are penalties for failure to discharge the duties. Discharge of the duties requires an understanding of the business of the company and the requirements under the law and the constitution of the company. In addition, more stringent requirements are imposed on directors in some sectors, including banking and financial services, insurance, pensions and listed companies. One should not, therefore, see the appointment of being a director as a favour done him or her, or take up the position thinking it is for recognition or to receive benefits. For a complete understanding of directors' duties, persons appointed as directors should be given complete orientation on the company's corporate governance system and the full scope of the company's business.

## Conclusion

The next time you receive a request to be a director of a company, first think of the possibility of going to jail or incurring personal liabilities. If you are an existing director of a company, know that there is such a possibility. The possibility that the new Office of the Registrar of Companies may start strictly enforcing the requirements of the new Companies Act to enforce all these liabilities should guide you in discharging your responsibility with due care. Companies should have full orientation for directors after their appointments.

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*Ferdinand D Adadzi is a Partner, with the Corporate & Finance Practice Group of AB & David Africa. He is based in the Accra office and works with the firm's Corporate & Finance team which advises on transactions across sub-Saharan Africa. He has advised several corporate entities and businesses on their corporate governance structure, structuring transactions, raising funding and partnership arrangements for projects. Ferdinand also lectures at the GIMPA Faculty Law in corporate law. He recently published a book titled "Modern Principles of Company Law in Ghana".*

Email/Telephone No.: [fadadzi@gmail.com](mailto:fadadzi@gmail.com) / 0242262180