

Becoming a US Director and wanting to reduce personal exposure?

Here's some useful information on how to mitigate personal risk and liability when stepping into a director role.

OVERVIEW

A Director is part of the Board which takes decisions for the Company. A Director is most commonly an Officer - CEO, CFO and COO. An Officer is responsible for day-to-day operations but is not automatically a Director.

US Directors owe duties of:

- (a) Loyalty and care;
- (b) Reasonable diligence; and
- (c) To avoid conflicts.

These duties apply to directors of a C-Corporation or a Limited Liability Company.

APPROACHES TO REDUCE PERSONAL EXPOSURE AS A DIRECTOR OF A US COMPANY

Business Judgment Rule

A Director is presumed to have acted on an informed basis and in the honest belief that he or she was acting in the best interests of the company.

Disclosure

Directors should always disclose situations transparently to sanitize potential or actual conflicts of interest.

Governance

Ensure the company is properly capitalized and undertakes Board and management meetings to give effect to corporate actions.

By-laws (Equivalent of UK Articles of Association)

The company's constitution can protect a Director from any legal action brought except where the Director has acted intentionally in bad faith. A specific set of indemnity protections can be written into the company by-laws.

Indemnification Agreement

The Director can enter into a separate indemnification agreement with the company which can provide for broader scope and mandatory protections where the Director is exposed to liability.

Directors and Officers Insurance

The company can pay for directors and officers insurance.