



CEO – My Dream Job

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I always wanted to be a CEO of a company. Sounds glorious, doesn't it? It's like once you are a CEO, you have arrived. However, it may not be as rosy as one may think. For one, a CEO (as a prescribed officer) also has fiduciary duties in terms of Sections 75 and 76 of the Companies Act 71 of 2008. So, if this is your goal, go in with your eye wide open.

This **KWIK series** aims to start conversations amongst individuals, social groups, and in organisations. We share practical knowledge – built up over decades, and which would have helped us if we knew it earlier. We believe that people between 25 and 45, if they have access to this knowledge, are ideally placed to lead in rebuilding South Africa.

Think About

- Have I considered the statutory and regulatory compliance implications of holding such a position?
- Do I understand what each of the provisions in the Companies Act mean?
- I thought only directors must worry about fiduciary duties, why must I?
- I know this company well and can run it successfully, so what else is there?
- If I can tick the boxes, will I be fine?
- I am in charge, so I will just delegate all those pesky legal requirements to one of the staff members or executives – surely all will then be fine?
- We are a small company, surely, they don't expect us to comply with everything?
- Do I know what I don't know? Have I asked the right people to make sure?

You have just got your dream job, or you are on the Executive team of a company that has just started up. Not much is in place and the Board Chair is hands on out of necessity. In the latter case, you know the company well, but you are not entirely sure if you can be successful in the CEO position. Knowing the company well is a great start, but understanding your fiduciary duties will help you run an ethical and compliant company. Not discharging your fiduciary duties means that you could be held personally liable for any loss or damages suffered by the company. The Companies and Intellectual Property Commission (CIPC) may also initiate "delinquency proceedings" against the CEO for any breach in fiduciary duties. Apart from fiduciary duties, familiarise yourself regarding "trading recklessly". This sounds ominous, and it is, however, if you are operating from a clear set of values, principles and ethical standards, the duties outlined below provide excellent guidance in making decisions that clearly reflect due care, skill and good faith.

What are my main fiduciary duties?

- **Duty of care and skill:** Making executive decisions is complex by nature and require skills and experience. Transactionally this may be easy, but making compliant and ethical decisions means you must exercise a "duty of care". You must pass the "reasonable man test": What would a reasonable person do in similar circumstances? Would you pass a public interview on national television?
- **Duty of good faith:** If you are the owner and CEO of the company, acting in good faith will help you build trust with your stakeholders. As an owner and CEO you wear a shareholder's hat, a director's hat, and an employee's hat. Its therefore critical that your decisions must be in the best interest of the organisation.
- **Duty to avoid conflict of interest:** Wearing the different hats inherently creates conflict of interest. It's tempting to give yourself an increase or a bonus but is this in the best interest of the company? A family member wants a job in the organisation. Is he or she the best person for the job? Avoid replacing the organisation's best interest with your own personal interests.
- **Duty not to use the organisation's information for personal gain:** This should read "do not use the organisation for personal gain" period. Do not abuse your position to use the organisation's assets, like a motor vehicle, for private trips or holidays. This includes taking stationary home for your kids. It's a trite example (and there are many more) but it means setting the right "tone at the top".
- **Duty to maintain confidentiality:** Information that must be kept confidential include trade secrets, or any other information that can be detrimental to the company. Ensure that you have controls in place to comply with the Protection of Personal Information Act 4 of 2013.
- **Duty to disclose interests:** To be read with identifying conflict of interests. You have a duty to disclose all personal financial interests that may impact the company's agreements or transactions. It is good practice to disclose your financial interests on an annual basis, in addition to any interest that may impact company agreements and transactions during the year.

- We provide coaching and mentoring sessions for young leaders wishing to equip themselves with knowledge to make a difference in society.
- Coaching takes place face-to-face or online, one-on-one or in groups – as suitable for participants.
- Requests for topics to be covered in this series are welcome.
- Other Lucidum Learning resources are available on our website at www.lucidum.africa.

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