

Business Information Sheet

Director Obligations

What it Means to be a Director of a Company

A company is a separate legal entity with its own rights and obligations. Company assets, liabilities, income and expenses belong to the company entity, not to the individual directors.

Directors are bound by certain rules that govern your behaviour. You must carry out your duties as a director in good faith, in the interests of the company (even if that conflicts with your personal interest), and for a proper (legal) purpose.

The *Corporations Act 2011* imposes legal obligations on company directors and sets out how directors must perform their duties and how they are expected to manage the affairs of the company.

Directors' Key Responsibilities

- To act in good faith in the best interests of the company and for a proper purpose
- To exercise care and diligence
- To avoid conflicts between the interests of the company and your personal interests
- To prevent the company trading while insolvent (i.e. while it is unable to pay its debts as and when they fall due)
- If the company is being wound up, to:
 - report to the liquidator on the affairs of the company
 - help the liquidator (e.g. by giving the liquidator the company books and records that you may have in your possession)

It is expected that a director can guide and monitor the management of their company. A director's responsibilities are not changed or limited by previous experience (or lack thereof).

Directors have a duty to act with honesty and diligence according to your legal obligations as set out in the *Corporations Act 2011*, and any other relevant laws such as *Superannuation Guarantee Act 2009* and *Goods and Services Tax Act 1999*.

Company Responsibilities

- Must have a registered office in Australia
- If the company operates from an address other than the registered office, ASIC must be notified of the principal place of business
- The company must notify ASIC of personal details of all directors - name, date of birth and residential address
- Must keep detailed financial records and lodge reports with ASIC if required
- Must keep ASIC details up-to-date; ASIC must be notified of changes to company details and personal details of directors within 28 days of changes
- Must pay relevant fees to ASIC and other licencing bodies as needed
- Must fulfil financial reporting and payment obligations as per the ATO requirements

Recommendations

- Always act in good faith and honesty in business dealings on behalf of the company
- Make sure you understand your legal obligations as a director
- Keep informed of the financial position of your company by reading and understanding financial reports regularly
- Get advice when considering changes to company and business activities
- Understand how any proposed changes may affect business performance
- Regularly meet with management and key personnel to remain informed about all aspects of the business
- Be careful when times are tough—it is illegal to trade while insolvent

What to do When Things go Wrong

In most cases, if things go wrong, the debts of a company remain with the company entity. The company entity will be active until it is de-registered with ASIC. However, in some circumstances, company directors may become personally liable for unpaid debts, and this liability may continue even though a company has ceased operations.

- Get professional advice from your tax agent before anyone else. Your difficulties may be temporary and there may be payment plans available to manage cashflow in the short-term
- Take action as soon as you believe there may be problems. Statistics show that directors who face the difficulties as soon as they are known about have a greater chance of overcoming the challenges and remaining in business.
- You may receive advice about voluntary administration, liquidation or receivership as appropriate to your company's situation.
- Whoever is appointed, you must assist them in their assessment and management of the company as long as required.
- If administrators or liquidators are appointed, you lose some or all control of the company depending on the situation. Again, depending on the circumstances, control may or may not be regained.

Summary

This is not a complete guide to director's responsibilities but is meant as an overview. You should check the links below for more detail on all aspects of your responsibilities as a company director.

References

- ASIC - Guide for Small Business Directors
- Australian Institute of Company Directors
- ATO - Director Penalty Regime
- ATO - Starting your Own Company