

The role of a company director is to govern a company on behalf of the shareholders or members of that company. This article provides a practical summary of the key duties and responsibilities of directors in Australia and is not intended to be an exhaustive list. The risks for directors if they breach their duties includes personal liability, reputational damage, and prosecution.

1. DUTY TO NOT TRADE WHILE INSOLVENT

Directors have a positive duty to ensure that their company can pay its debts as and when they fall due. It is insufficient for a director to only understand the financial position of the company on the basis of yearly financial statements. Directors must be constantly aware of their company's financial position.

TIP – Before entering into a new arrangement where the company will incur a debt, you should consider whether you have reasonable grounds to believe that the company will be able to repay the debt along with its other debts as and when they fall due. If you are relying on funding to repay the debt, consider the likelihood of obtaining that funding and ensure that you retain evidence of it (such as approval letters, file notes of conversations with the bank etc.).

2. MAINTAIN BOOKS AND RECORDS

Directors must take all reasonable steps to ensure that the company maintains detailed, accurate and current financial records. The records need to be able to explain transactions and the company's financial position and performance. If an action for insolvent trading is brought against a director, the company can be deemed insolvent where it is unable to show that it had kept adequate financial records.

TIP – You should regularly review the financial position of the company (i.e. how much is in the bank, the creditors, good and bad debtors and any future liabilities) and keep the internal accounting system up to date.

3. DISCLOSING DIRECTORS' INTERESTS

Directors should disclose matters relating to the affairs of the company in which they have a material personal interest.

TIP – As soon as practical after you become aware of a conflict as the director, you should give notice of the conflict at the following directors meeting. You should make sure to disclose the full nature of your interest and its relation to the affairs of the company.

4. LODGING INFORMATION WITH ASIC

Directors must ensure that the company complies with its obligations to keep ASIC informed as to changes, such as a change in director or address, as well as pay all ASIC fees, such as the annual fee.

PRACTICAL TIP – You should prepare a short list of items that you need to keep ASIC informed about, and each month quickly check it and ensure nothing has changed. You need to notify changes within 28 days of their occurrence.

5. GENERAL DUTIES UNDER CORPORATIONS ACT

General duties imposed by the Corporations Act include:

- Care and diligence – This duty requires directors to act with a degree of care and diligence that a reasonable person might be expected to show in the role. This includes taking steps to ensure that you are properly informed about the financial position of the company.
- Act honestly, in good faith, in the best interests of the company and for a proper purpose. Directors should make decisions in the best interests of the company and for a proper purpose. This includes revealing and managing conflicts if they arise.
- Not to improperly use position or information – Directors must not improperly use the information they gain in the course of their director duties or their position to gain an advantage for themselves or someone else (and particularly not to disadvantage shareholders).

KEY TAKEAWAY MESSAGE

Directors are heavily regulated and accountable to their shareholders in Australia. There are numerous duties and responsibilities that are imposed on directors, including duties under legislation other than the Corporations Act. For example, directors also have personal liability for certain failures by their companies under the Workplace Health and Safety laws. Beck Legal provides tailored directors training services to company directors. Should your company require assistance in this regard or advice around managing a breach or potential breach of a duty, please contact us.