

Directors Duties

The recent prosecutions against directors of failed finance companies show the need for directors to understand their duties as directors.

Your Duties Under The Act

A company's activities are managed by, or under the supervision of, its' directors. In addition to this primary duty, directors also have the following core duties:

- To act in good faith and in the company's best interest
- To exercise due care, diligence and skill
- To exercise their powers for a proper purpose
- To comply with the Companies Act and with the company's constitution
- To avoid carrying on the business of the company in a manner likely to create a substantial risk of serious loss to the company's creditors; and
- To avoid incurring obligations unless they are satisfied that the company will be able to honour them when required to do so.

Consequences

The Companies Act imposes penalties for breaches of the various obligations.

In addition, if a company goes into liquidation and a director is found to be in breach of his or her duties, that director could be personally liable to repay or restore funds (with interest) or to contribute a sum to the assets of the company.

Also, the recently introduced Companies Unlimited Partnerships Amendment Bill aims to criminalise breaches of:

- The duty to act in good faith in the company's best interests, if the director knows that the breach is seriously detrimental to the interest of the company; and
- The duty to avoid carrying on the business in a manner likely to create a substantial risk of serious loss to the company's creditors, if the director knows that the breach will result in a serious loss to the company's creditors

Practical Tips

- Understand the company's business and financial status
- You must be able to read and understand the company's financial statements. Ask your accountant to explain the financials until you are confident that you can comply with your duty of managing and supervising the company's business.
- Act objectively and independently. Your duties as director are owed by you personally, not by the board as a whole.
- Ask for more information if you think it is needed.
- As long as you take reasonable steps to avoid an error, you should avoid breaching your duties as director even if a mistake is made.
- You are allowed to seek expert and professional advice, and to rely on information from company employees, professional advisers, experts and other directors with delegated authority for a particular matter. However, if you do so, you must:

- Still critically examine that advice and form your own opinion;
- Be satisfied that the person you are relying on is competent in relation to that particular matter;
- Make proper enquiry when circumstances indicate that further explanation is required;
- Make sure that the information provided to the advisor is accurate and complete, and you are clear on the scope of their advice.

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