

Duties of Directors

Persons who are company directors must be aware that strict duties are imposed upon them by the Corporations Law and the common law.

Duties

The most significant duties are:

1. To act with a degree of care and diligence that a reasonable person would exercise in the circumstances;
2. To act in good faith;
3. To exercise powers for a proper purpose;
4. To avoid conflicts of interest;
5. To act in the best interest of the company;
6. To prevent the company incurring a debt if there are reasonable grounds for suspecting that the company is insolvent at the time the debt is incurred or would become insolvent by incurring the debt;
7. To not make improper use of information or their position;
8. To take reasonable steps to place themselves in a position to guide and monitor the management of the company; and
9. To independently consider matters that come to the Board and make informed decisions.

Conflicts of Interest

Directors have a duty to avoid any actual or potential conflict between their own interests and those of the company, and between their duty to the company and their duties to third parties (such as the duties owed by them to other companies or bodies of which they are also directors or officers). There is a potential conflict of interest where a reasonable person, looking at the relevant facts and circumstances, would consider there to be a real possibility of conflict. In this context it is also necessary to consider what is permitted by the constitution of the company.

All directors have a duty to act in the best interests of the company.

Penalties for Breach of Duty

If a director breaches any of the above duties, he or she may be personally liable for the loss or damage suffered by the company. In addition, the Corporations Law contains civil penalty provisions for breaches of certain duties by directors which include the imposition of a penalty of up to \$200,000. The Corporations Law also contains criminal penalty provisions which apply where the breach is accompanied by dishonest intent or recklessness.

Please contact Legal Services on ext 9479 2495 should you require further information in relation to this issue.

This article provides general information only. It is not a complete or definitive statement of the law on the subject matter. Formal legal advice should be sought in relation to particular matters.

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