DIRECTOR DUTIES

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William Buck

Directors' Duties

WHO

does this apply to?

WHAT

are the duties?

WHY

does it matter?

HOW

can you get it right?

Who is a Director?

- Appointed directors
- De Facto directors
- Shadow directors
- Silent directors

Sources + Types

SOURCES

- Common law
- Corporations act
- Company constitutions
- Shareholders agreements
- Legislation.

TYPES

- Loyalty + Good Faith
- Care, Diligence + Skill

Loyalty + Good Faith

Act in the **best interests of the company**

Only use your director' powers for a **proper purpose**

Considering decisions **on their merits**

Avoiding or disclosing actual or **potential conflicts of interest**

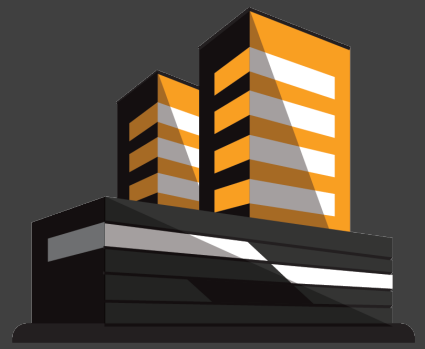
Not misusing information or your position to gain an advantage for themselves or for someone else, or to the detriment of the company

Obtaining approval of the public company's members before giving **financial benefits to related party transactions**

Loyalty and good faith – in lockdown

An employee

A Director



A Company

Care, Diligence + Skill

Act with an appropriate amount of **care, diligence and skill**

Be informed about **the company's financial position**

Ensure the company is **not trading while insolvent**

Consider the company's financial position before incurring a new debt.

Take all reasonable steps to ensure the **company keeps updated and adequate financial records and reporting.**

Keep **ASIC up to date**

Warning Signs

- Receiving follow up letters from trade suppliers for missing payments;
- Difficulty meeting loan repayments on time or keeping within overdraft limits;
- Legal action being taken or threatened by trade suppliers or other creditors over money owed to them;
- Low operating cash flow from the main business;
- Trade suppliers refusing to extend further credit to the company;
- Trade suppliers requiring COD;
- Missing deadlines for payment of PAYG tax, workers compensation premium or BAS statements on time.

Business Judgement Rule

- **Was your decision:**
  - justifiable and understandable?
  - made after receiving legal or other advice?
  - made after meetings and discussions about the risks and possible outcomes of the decision? Did you put safeguards in place?
  - made in the best interests of the company… or in your own personal interests?

CONSEQUENCES – Breach Of Duties

- Civil penalties (i.e.. Fines)
- Jail time in extreme cases;
- Becoming personally responsible for paying off some of the company's debts;
- Disqualification from managing another company; or
- Being removed as a director by shareholders of the company.

How To Protect Yourself

- Know the duties
- Keep your records up to date
- Directors & Officers Insurance
- Deeds of Access, Indemnity and Insurance

Questions?

Later today…

- 2pm Thursday 22 July:
  Insolvency Risk
- *Finding the safe harbour – managing business risk through the Sydney shutdown. The shutdown of the construction industry in Sydney will have a devastating effect on businesses – big and small.*

  Matthew Bryan, will be speaking with Chad Rapsey, Founder of Rapsey Griffiths Turnaround + Advisory, around what steps businesses should be taking to steady the ship through the construction shutdown, and what options may be open to them, including the safe harbour regime under the Corporations Act.

WE'RE HERE TO SUPPORT

As always, specific legal advice should be sought in any circumstance.

Please reach out to us, or your preferred legal service provider,
to discuss any and all concerns around the construction industry shutdown.

You can reach us directly here:

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