

Directors' Duties – Checklist

Directors of a company are responsible for managing, directing and supervising the business and affairs of the company. Under this broad umbrella of responsibility, there are duties of directors as fiduciaries codified duties under the Companies Act 1993 (the **Act**) and under different statutes. These are set out below.

Fiduciary duties (sections 131 to 148 of the Act)

Good faith and best interests: When exercising powers or performing duties, a director must act in good faith and in what he/she believes to be the best interests of the company. This duty does not limit a director from making provision for the benefit of employees in connection with the company ceasing to trade.

Proper purpose: A director must exercise a power for a proper purpose.

Companies Act and constitution: A director must not act, or agree to the company acting, in a manner that contravenes the Act or its constitution. The constitution may specify further duties of directors, which will apply for so long as those duties are not inconsistent with the Act.

Reckless trading: A director must not agree to, or cause or allow, the business of the company being carried on in a manner likely to create a substantial risk of serious loss to its creditors.

Incurring obligations: A director must not agree to the company incurring an obligation unless he/she believes at that time on reasonable grounds that it will be able perform the obligation.

Duty of care: When exercising powers or performing duties, a director must exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, without limitation: (a) the nature of the company, (b) the nature of the decision, and (c) the position of the director and the nature of the responsibilities undertaken by him/her.

Disclosure of interests: A director must, immediately upon becoming aware of any fact that he/she is interested in a transaction of proposed transaction with the company, disclose his/her interest to the board and in the interests register of the company.

Use of company information: A director who has information in his/her capacity as director or employee of the company, that would not otherwise be available, must not disclose or make use of, or act on the information except in limited circumstances.

Disclosure of share dealing: A director who buys or sells an interest in shares in the company must, immediately after the transaction, disclose to the board of directors and in the interests register of the company the details of that transaction.

In limited circumstances, a director may rely on external information provided to the director when exercising powers or performing duties as a director.

Other statutory duties (examples – non-exhaustive)

- **Share register and company records:** Each director must take reasonable steps to ensure that the share register of a company is properly kept and that share transfers are promptly entered on it. The board must also ensure that adequate measures exist to prevent records of a company being falsified and detect any falsification of them.
- **Accounting records:** The board must ensure that the company maintains at all times accounting records that: (a) correctly record the transactions of the company, (b) will enable the company to ensure that the (group) financial statements comply with generally accepted accounting practice (if required), and (c) will enable the (group) financial statements to be readily and properly audited (if required).
- **Annual meetings:** The board must call annual meetings of shareholders as required under the Act or the company's constitution.
- **Health and safety:** A director must ensure, so far as is reasonably practicable, the health and safety of: (a) workers who work for the director, while the workers are at work in the business or undertaking, and (b) workers whose activities in carrying out work are influenced or directed by the director, while the workers are carrying out the work.
- **Capital raising and financial reporting:** A director must ensure that a company does not make a defective disclosure in its product disclosure statement or register entry or otherwise permit contravention of its financial reporting obligations, as he/she will be treated as also having committed those breaches.

If you have any questions about the matters discussed in this update, please get in touch with your usual JW Legal contact (www.jwlegal.co.nz) or Josh Woo (E: josh.woo@jwlegal.co.nz | T: +64 21 0293 8699).