SMALL BUSINESS COMPANY DIRECTORS.

While running a company, directors must personally comply with obligations under Australian law. Here are the most significant responsibilities for small business company directors and how to become a company director (Australian Securities and Investments Commission, 2020)

- How to appoint a company director
- Key responsibilities of company directors
- How directors should manage assets, debts, employees and investments
- Director duties if a liquidator has been appointed
- Responsibilities of shadow directors

HOW TO APPOINT A COMPANY DIRECTOR

As a company director, you must be in a position to guide and monitor the management of your company. Most company directors of small companies will also be heavily involved in the management of the company.

You should only agree to become a company director or secretary if you are willing, able and have enough time to put in the effort.

You should not agree to be appointed as a director or secretary of a company on the promise that 'you won't have to do anything' and 'just sign here'. You could be exposing yourself to serious liabilities if you accept such a role (Australian Securities and Investments Commission, 2020). Find out more about how to become a company director.

KEY RESPONSIBILITIES OF COMPANY DIRECTORS

As a director, you are responsible for oversight of the affairs of the company. You must comply with your legal obligations as a director under the Corporations Act 2001. This is the case even if you appoint an agent to look after your company's affairs.

As a director, you must be fully up-to-date on what your company is doing, including its financial position, question managers and staff about how the business is going and take an active part in directors' meetings.
You must not use your position as a director of a company – or information obtained because you are or have been a director, officer, or employee of a company – to cause detriment to the company or to gain an advantage for yourself or someone else.
When you make a business decision as a company director, you must, amongst other things, ensure that you:

- make the decision in good faith and for a proper purpose
- do not have a material personal interest in the decision and make it in the best interests of the company
- find out and assess how any decision will affect your company's business performance, especially if it involves a lot of the company's money or could have a material impact on the company's reputation
- keep informed about your company's financial position and performance, ensuring your company can pay its debts on time
- get trusted professional advice when you need assistance to make an informed decision
- make full and frank disclosure about any material personal interests you do have

(Australian Securities and Investments Commission, 2020)

There are penalties and consequences – including civil penalties, compensation proceedings and criminal charges – for directors who fail to comply with their obligations under Australian law.

All the duties and responsibilities listed on this page are the minimum obligations for directors and officers of small propriety companies.

HOW DIRECTORS SHOULD MANAGE ASSETS, DEBTS, EMPLOYEES AND INVESTMENTS

As a company director it is important you understand that:

- the company owns the assets so you cannot treat company property, assets or funds, as if they are your own.
- the company is generally responsible for paying debts incurred by the company, which may include trade creditors, employees and statutory bodies such as the Australian Taxation Office. If there are grounds for suspecting that the company is insolvent, you must not trade, incur debt, or continue to conduct business as usual. Instead, you should immediately seek trusted professional business advice.
- any money invested in the company (e.g. through loans to the company or by owners or investors buying shares in the company) belongs to the company and must be used for a proper company purpose.
- the owners or shareholders of the company are entitled to take a dividend payment (e.g. money) from the company, but only after the company has ensured it has the ability to pay its debts owing to trade creditors and other types of creditors who have lent money to the company, employees and statutory authorities.
- while a company is usually responsible for paying its debts, a director may become personally liable. This generally occurs when a director breaches their legal obligations (e.g. the company continues to trade while it is insolvent)

(Australian Securities and Investments Commission, 2020).

If your company has employees, you should find out if there are any Pay As You Go (PAYG) withholding or Superannuation Guarantee Charge (SGC) amounts owed to the Australian Taxation Office (ATO) by the company.

If you fail to meet a PAYG withholding or SGC liability by the due date, you may become personally liable for a penalty equal to the unpaid amount under the ATO's Director Penalty Regime (Australian Taxation Office, 2019).

Illegal phoenix activity
Intentionally transferring the business and assets of an indebted company into a new company to avoid paying outstanding debts is known as illegal phoenix activity. The new company often has the same directors and is involved in the same industry as the old company.

DIRECTOR DUTIES IF A LIQUIDATOR HAS BEEN APPOINTED

If a liquidator has been appointed to the company, the director has an obligation to give the liquidator:

- a statement about the company's business, property, activities and financial circumstances through a document called the 'Report on Company Activities and Property'(ROCAP)
- deliver all the records of the company to the liquidator
- provide assistance to the liquidator as and when requested (for example, by responding to the liquidator's letters) (Australian Securities & Investments Commission, 2020).

Find out more about director duties during liquidation.

RESPONSIBILITIES OF SHADOW DIRECTORS

Even if you are not formally appointed as a director, you may still be subject to the same duties and liabilities as a director. For example, if you act as a director or give instructions to the appointed directors on how they should act, you may be considered a 'shadow director'. Shadow directors can still be liable for breaches of the laws relating to directors' duties, even though they were never formally appointed as a director of the company (Australian Securities & Investments Commission, 2020).

The above information as been taken from the Australian Security and Investment Commissions website (ASIC), For more information please visit the ASIC: https://asic.gov.au/

References:

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