

Fact sheet: Your responsibilities as director

Your role

If you are appointed as a director of any company, you should understand your responsibilities and the need to comply with both company law and the accepted code of behaviour of company directors.

These requirements are basically the same whether the company is a family business or a multinational. The law doesn't treat a director any differently whether the company is a major public company or a private company or whether the director is being properly paid or is performing the role of director in an honorary capacity.

As a company director you bring together your responsibilities and obligations under the Companies Act with the potential to make a real difference to the company's growth.

Directors and different types of company

Your involvement in the company as director will depend on what kind of company it is, how big it is and what kind of governance structures may be in place.

Many small, closely held companies have one or two directors, typically 'Mum and Dad'. Large corporate businesses have large-scale formal structures in place with well-defined procedures and documentation relating to the board's operations.

Governance requirements

The Companies Act 1993 sets out the duties of directors and specifies throughout the Act where and how directors will involve themselves in a company's business. As a director, you owe it to yourself and the company to become fully conversant with your obligations under the Act.

Two principles underpin all your activities as a director:

- good faith
- duty of care

Most major decisions require a degree of director involvement — the directors must generate or be aware of them, and agree to them. These decisions are documented and held on the company's statutory file.

Directors' Duties under Companies Act 1993

The Companies Act 1993 sets out the duties of directors when exercising powers or performing duties:

<i>a director must ...</i>	<i>a director must not ...</i>
act in good faith in the best interests of the company	act, or agree to the company acting, in a manner contravening the Act or the company constitution
exercise a power for a proper purpose	agree to, cause or allow the business of the company to be carried on in a way likely to create substantial risk of loss to the company's creditors
exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances	agree to expenditure without ensuring the company is able to meet its obligations as they fall due (e.g. tax, bills). This typically comes up where the directors must certify solvency
provide for the company's employees should the company cease to carry on all or part of its business	
<i>A director of a company may ...</i>	<i>but only if the director ...</i>
rely on reports, statements, financial data and other information, and on professional or expert advice from: <ul style="list-style-type: none"> • an employee of the company whom the director believes on reasonable grounds to be reliable and competent • a professional advisor or expert on matters the director has reasonable belief to be within the person's professional 	<ul style="list-style-type: none"> • acts in good faith • makes proper inquiry where circumstances indicate the need for inquiry • has no knowledge that such reliance is unwarranted

or expert competence

• any other director or committee of directors (except committees on which that director serves) on matters within the director's or committee's designated authority

Directors' interests

Directors' responsibilities commit them to acting in the best interests of the company. It's important there is no conflict of interest, even where a director might also be involved with another business or project whose interests might somehow touch on the interests of the company.

For instance, you inherit an interest in a fertiliser company and you also sit on the board of a farming business in the same region. Even though you have no intention of double dealing, there is potential for there to be seen to be a conflict of interest in the matter of supplier contracts. The correct process here is to:

- declare the inherited interest at the next board meeting
- ensure this is recorded in the company's interests register
- disclose it in the annual report to shareholders

In a similar way, sometimes you, as a director, are privy to confidential information about the business. You shouldn't use this inside information to make a personal profit. And you can only disclose this information to outside parties if:

- the board authorises you to do so
- that use of information is entered in the interests register
- disclosure is not prejudicial to the company's interests

Liability and penalties

If directors act negligently or in breach of their duties, they can be personally liable. This applies just as much to 'silent partners' as to those active in the business.

If you as director are badly prepared, lack the skills or are ignorant of the activities of the company you put yourself at risk. directors' liability insurance might be a good idea. But it's even more important to understand directors' responsibilities and to act effectively in your role.

Breaches of the Companies Act by directors are specified at some length by the Act. Penalties for breaches of the Act range from fines of between \$5,000 and \$200,000 and jail terms of up to 5 years.

Resources

As a company director, consider joining the [Institute of Directors](#). The Institute is the professional body for boards and board members in New Zealand. You can:

- develop your skills
- keep your knowledge current
- learn from the experiences of other directors
- access information and services that will help you as a director

The Institute of Directors runs courses and events for directors and provides a valuable touchstone for new directors in particular. Their [Code of Practice for Directors](#) is an excellent introduction for directors to enable businesses to achieve their purpose.

Keep in mind

We'd be happy to work with you to facilitate directors' meetings and to provide you with regular reporting for directors.

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