

## ASIC Fact Sheet - Your company and the law:

Director and Secretary requirements of a small proprietary company:

- be honest and careful in your dealings at all times
- know what your company is doing
- take extra care if your company is operating a business because you may be handling other people's money
- make sure that your company can pay its debts on time
- see that your company keeps proper financial records
- act in the company's best interests, even if this may not be in your own interests, and even though you may have set up the company just for personal or taxation reasons, and
- use any information you get through your position properly and in the best interests of the company. Using that information to gain, directly or indirectly, an advantage for yourself or for any other person, or to harm the company may be a crime or may expose you to other claims. This information need not be confidential; if you use it the wrong way and dishonestly, it may still be a crime.

As a director you must (without court consent):

- Be over 18 years of age
- Find out and assess for yourself how any proposed action will affect your company's business performance, especially if it involves a lot of the company's money.
- Get outside professional advice when you need more details to make an informed decision.
- Question managers and staff about how the business is going.
- Take an active part in directors' meetings
- Not be an undischarged bankrupt, not subject to a personal insolvency agreement or an arrangement under Part X of the *Bankruptcy Act 1966* (Bankruptcy Act) that has not been fully complied with, not subject to a composition under Part X of the Bankruptcy Act and final payment has not been made, or have been convicted of various offences such as fraud or offences under company law, such as a breach of your duties as a director or insolvent trading. If you have been convicted of one of these offences you must not manage a company within five years of your conviction. If imprisoned for one of these offences, you must not manage a company within five years after your release from prison.

All companies must have financial records that are true and fair. Records include:

- financial statements that can be conveniently and properly audited if necessary (note the company can obey the tax laws)
- general ledger, recording all the company's transactions and balances (e.g. revenue, expenses, assets, liabilities) or summarising transactions and balances detailed in other records
- cash records (e.g. bank statements, deposit books, cheque butts, petty cash records)
- debtor and sales records (e.g. a list of debtors and their balances, delivery dockets, invoices and statements issued, a list of all sales transactions)
- creditor and purchases records (e.g. purchase orders, invoices and statements received and paid, unpaid invoices, a list of all purchases, a list of all creditors and their balances)
- wage and superannuation records
- a register of property, plant and equipment showing transactions and balances in relation to individual items
- inventory records
- investment records (e.g. contract notes, dividend or interest notices, certificates)
- tax returns and calculations (e.g. income tax, group tax, fringe benefits tax and GST returns and statements), and
- deeds, contracts and agreements.

When a company is set up, you must:

- register your company name with ASIC and obtain an [Australian Company Number](#) (ACN)
- have a registered office. (If your company doesn't occupy the same address as the registered office, then you must have written consent from the person who occupies the registered office)
- display the company name at every place at which your company carries on business and that is open to the public. Also, a public company must display its name and the words 'registered office' prominently at its registered office.
- display the company name, the words 'Australian Company Number' (or 'ACN') or 'Australian Business Number' (or 'ABN') and the relevant number on:
  - the common seal (if the company has one)
  - every public document of the company
  - every negotiable instrument (e.g. cheque, promissory note) of the company, and
  - all documents lodged with ASIC.

Your company must also keep:

- registers of members (shareholders)
- registers of option holders (if you have them) minutes of general meetings
- minutes of meetings of directors
- registers of charges created by the company over company property (s271 of the Corporations Act was removed from registration under the Personal Property Securities Act 2009. You are required to have this register and make entries up until this point in time), and
- financial records that enable an assessment of the company's financial position and performance and are sufficient for financial statements to be prepared (and audited if necessary) for at least seven years after the transactions are completed.

To avoid the payment of late fees or other non-compliance action you must:

- pay the annual review fee within two months after the review date
- lodge a Change to company details to update your company's details if they change during the year, within 28 days after the change, and
- lodge a Change to company details (if required) to update your company's details, within 28 days after your annual statement's issue date
- pass a solvency resolution within two months after the company's review date, unless the company has lodged a financial report with ASIC within twelve months before the review date.

You must notify ASIC of:

- Change in place you keep the registers
- Change of officeholders or details of officeholders
- Resignation of director or secretary
- Change of registered office
- Change of company name
- Issue of new shares
- Change to members (shareholders)
- Changes to ultimate holding company
- Division or conversion of shares
- Negative solvency resolution or solvency resolution not passed
- Change of company review date