

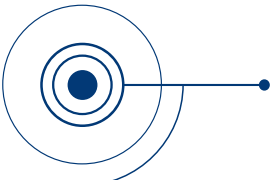
Roles & Responsibilities of Company Directors

A company must have at least one director who must ordinarily reside in Australia. If a company has more than one director, at least one of the directors must ordinarily reside in Australia.

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

You should only agree to become a company director if you are willing, able and have enough time to put in the effort. You should not agree to be appointed as a director 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.

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.

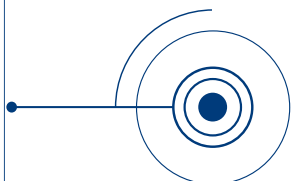
When you make a business decision as a company director, you must, amongst other things, ensure that you:

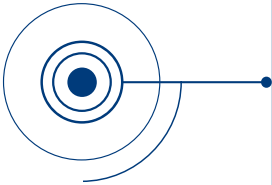
- make the decision in good faith and for a proper purpose
- do not have a material personal interest in the decision and make it in the best interests of the company
- find out and assess how any decision will affect your company's business performance, especially if it involves a lot of the company's 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 honest disclosure about any material personal interests you do have

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.

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, it does not pay certain liabilities administered by other agencies) – discussed below.
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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.

Directors Personal Liability and the Director Penalty Regime

Directors can be held personally liable for debts in the company in certain circumstances. These include where:

- as a result of you breaching your duties as a director, you have caused the company to suffer some loss.
- as a result of breaching laws administered by other agencies. For instance, you may be held personally liable for outstanding tax obligations of the company under the ATO's Director Penalty Regime. As a director, you have a legal responsibility to ensure your company meets its Pay As You Go (PAYG) withholding, Superannuation Guarantee Charge (SGC) and Goods & Services Tax (GST) obligations.

Failure to comply with the above regulations may mean that a director is held personally liable for these debts.

Director Identification Numbers

Australia's Director Identification Number (DIN) regime came into effect on 1 November 2021 and will require Directors to register for an identification number.

A director ID is a 15 digit identifier that, once issued, will remain with you for life regardless of whether you stop being a director, change companies, change your name, or move overseas.

All directors of a company, a registered Australian body, a registered foreign company or an Aboriginal and Torres Strait Islander corporation will need a director ID. This includes directors of a corporate trustee of a self-managed super fund. If you are only a company secretary, you are unaffected.

There is a transition period for registration if you are already a director.

Date appointed

On or before 31 October 2021

Between 1 November 2021 and 4 April 2022

From 5 April 2022

Application Date

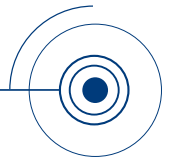
Before 30 November 2022

Within 28 days of appointment

Before appointment

If a company intends to appoint new directors, it will be important to ensure that they are aware of the requirements and timeframes to establish their director ID if they do not already have one.

Please contact your Byfields accountant or our website for instructions on how to apply for a DIN.



If you have any queries with the above information, please contact your nearest Byfields Office.

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