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YOUR RESPONSIBILITIES AS DIRECTOR

FACT SHEET

As a director, you are responsible for the management of the affairs of your 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.

RESPONSIBILITIES IMPOSED ON THE DIRECTOR

Some of the most significant and important legal responsibilities imposed on directors under the *Corporations Act 2001 (Cth)* and other laws, including the general law include:

- To act in good faith in the best interests of the company and for a proper purpose
- To exercise care and diligence
- To avoid conflicts between the interests of the company and your personal interests
- To prevent the company trading while insolvent (i.e. while it is unable to pay its debts as and when they fall due)

There are serious financial and legal consequences for failing to perform your duties as a director. These are outlined in the Director and Officer Liability section below.

RESPONSIBILITIES IMPOSED ON THE COMPANY

The *Corporations Act 2001* also imposes responsibilities on the company. As a director of the company, **you are responsible for ensuring that the company complies with these obligations.**

The company responsibilities include:

- **Having a current registered office** – A company must have a current registered office in Australia and must inform ASIC of its location
- **Having a principal place of business** – A company that operates a business from a location different from the registered office must inform ASIC of this fact and the location
- **Disclosing personal details of directors** – A company must inform ASIC of the name, date of birth and current residential address of the directors
- **Keeping financial records** – A company must keep up-to-date financial records that correctly record and explain the company's financial position. Larger companies have additional obligations to lodge financial reports with ASIC
- **Keeping company records** – A company must keep an up-to-date register of members and office holders and minutes of meetings, including circulating resolutions
- **Notifying ASIC of key changes** – ASIC must be notified of any key changes to the company's details
- **Paying relevant fees to ASIC** – You must ensure on-time payment of all ASIC fees, such as the annual review fee
- **Checking annual statements** – You must ensure that your company's details on the ASIC register are accurate and up to date

CoSec can many of your company obligations on behalf of your company and directors, as part of our comprehensive service package.

HOW TO MEET YOUR RESPONSIBILITIES AS DIRECTOR

This below list is not extensive, however, you are unlikely to face consequences as a company director if you:

- Are honest and careful in dealing with the company and on its behalf with others
- Understand your legal obligations and ensure that you maintain compliance with them
- Keep informed about your company's financial position and performance, make sure your company can pay its debts on time, and keep proper and accurate financial records

- Make the interests of the company, its shareholders and its creditors top priority – this includes acting in the company’s best interests, even if this may not be in your own best interests
- Use information obtained through your position properly and in the best interests of the company
- Seek professional advice or more information if you have any doubts or questions

As a director, you must keep fully up-to-date on your company’s actions. You should:

- Find out and assess for yourself how any proposed action will affect your company’s business performance, especially if it involves a large proportion of the company’s money
- Seek external professional advice if you need more details in order to make an informed decision
- Question managers and staff regularly about how business is tracking
- Take an active part in directors’ meetings

<http://asic.gov.au/for-business/your-business/tools-and-resources-for-business-names-and-companies/asic-guide-for-small-business-directors/directors-key-responsibilities/>

DIRECTOR AND OFFICER LIABILITY

Increasing corporate governance and regulatory surveillance means Australian companies, directors and officers are under greater pressure to perform their duties and obligations with meticulous care.

Failure to do so may lead to personal liability for the individual director or for the entire board of directors, regardless of whether they are acting in a part-time, honorary or non-executive capacity.

It is vital that you understand your personal liability and what measures you can take to protect yourself. Some of these measures include:

- Reducing your personal liability risk with a Deed of Indemnity, Access and Insurance
- Transferring your personal liability risk using Directors and Officers (D&O) insurance
- Being aware of your residual personal liability risks and considering the management of your personal assets

FINANCIAL RISKS FOR DIRECTORS

Under the *Corporations Act 2001*, if you, as director, breach a duty or fail to meet an obligation, you can be disqualified from acting as a director of a company in the future. You may also be found guilty of a criminal offence, and in serious cases, you can face up to five years imprisonment. You may also face financial penalties of up to \$200,000, which may include:

- Compensation to an aggrieved party
- A fine or penalty
- The legal costs of the other party
- Your own legal defence costs
- Interest on any of the above

There are some risks that cannot be covered by Directors and Officers insurance. These include:

- Loss of reputation
- Personal financial losses
- Legal costs of the other party
- Fines and penalties for criminal offences, and certain civil pecuniary penalties
- Fraud, wilful misconduct and criminal conduct

POTENTIAL CLAIMANTS

A claim for breach of a duty or failure to meet an obligation may be brought against you by parties such as:

- Your company itself
- Shareholders
- Regulators, such as ASIC
- Employees
- Creditors
- Customers
- Liquidators (or administrators or trustees)
- Other directors on the board

DIRECTORS AND OFFICERS INSURANCE

A D&O Insurance policy is not compulsory in Australia, but almost all Australian companies choose to take out this insurance to offer protection to their officers.

The policy should include ‘run-off’ coverage. This can protect past directors for claims arising out of wrongful acts that occurred prior to their retirement or removal from office, for up to the seven-year statute of limitations.

This period also coincides with the statutory right under the *Corporations Act 2001* for directors to access company books after ceasing to be a director.

RISK MANAGEMENT

To proactively address potential risks for directors and officers, CoSec provides all clients with a risk management questionnaire for completion on a regular basis.

The questionnaire is designed to address key risks and focus areas for your Australian subsidiary.

This ensures that we can identify and effectively manage any outstanding compliance issues. It also ensures that the directors of the business can make informed decisions about the business, and in doing so avoid personal liability for any issues that arise.

RESIDENT DIRECTORS

CoSec's Resident Directors provide a range of services that are required to be performed by a local director, including:

- Signing documents for lodgement with regulatory authorities and managers (e.g. ASIC, TGA, ATO)
- Acting as the shareholder's representative to ensure appropriate compliance protocols are adhered to
- Liaising with regulatory authorities and financial institutions

RESIDENT COMPANY SECRETARIES

CoSec's Resident Company Secretaries provide a complete range of corporate governance and compliance services, including:

- Planning and managing Board, committee and shareholder meetings
- Preparing and lodging official forms with ASIC and TGA
- Maintaining statutory registers in accordance with the Corporations Act and the Company's constitution
- Providing general governance and compliance advice

RESIDENT PUBLIC OFFICERS

CoSec's Resident Public Officers act as liaison with the ATO in:

- Managing all correspondence and communication with the ATO
- Acting as the authorised representative of the company
- Signing official returns to be lodged with the ATO

COSEC DIRECTORS

On 1 August 2016, CoSec became one of the first Australian compliance service providers to offer foreign companies with directors that reside overseas the 'inside knowledge' of a local director with extensive corporate and compliance expertise.

Called *CoSec Directors*, this service provides authoritative, highly qualified directors who will create a solid foundation for high-potential, foreign-owned companies in Australia.

If you are a foreign company establishing a subsidiary in Australia, CoSec will nominate an experienced Resident Director, Company Secretary and Public Officer. These appointees will liaise with regulatory authorities, manage your local interests and ensure that you are fully compliant with all legislative and regulatory requirements.

CoSec's core services encompass the entire spectrum of market and jurisdictional compliance, from company incorporations and maintenance of statutory registers, to compliance with the lodgement requirements of the ASIC, the ATO and the TGA. We can also take care of the administration tasks involved with your Board or shareholder meetings, from preparing agendas and resolutions, through to announcing material news to the market.

Engaging CoSec's secretarial services gives you the confidence that all of your compliance and governance needs are met.

For more information about our services contact:



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