

Factsheet 4: A guide to being a company director

If you are a director of a company in Solomon Islands, you must comply with the requirements of the Companies Act. Failure to comply may lead to penalties, disqualification, and may lead to you being sued.

The following is a guide to let you know the main responsibilities of being a director. It isn't a substitute for legal advice- so if you have any uncertainty, we recommend you speak to a legal professional.

If you learn nothing else, this is what you need to know as a director.

You must:

- be honest and take care in your dealings at all times
- know what your company is doing
- make sure that the company can pay its debts on time
- be sure that the company keeps proper financial records
- act in the company's best interests, even if this may not be in your own interests

If you have personal interests that might conflict with your duty as a director, you must disclose those interests.

If you are a community company director, you must comply with further reporting obligations and responsibilities.

What is a director?

Directors are responsible for overseeing the management of the company. A director might also be a shareholder, but does not have to be a shareholder.

Directors owe duties to the company, to its shareholders, and to others dealing with the company. A director has to be prepared to take on certain responsibilities, and a failure to meet those responsibilities may not only put the company at risk of failure, but it may lead to offences being committed by the director under the Companies Act.

What are the duties of a director?

Good faith

The most important duty is that a director must act in **good faith, meaning, honestly**. This means that a director needs to tell the truth to the company's owners (shareholders), to third parties (such as a bank who lends the company money), and to the government (such as the inland revenue authorities).

A director must act in a way which they believe is in the **best interests of the company**. This

means that any decisions a director makes, or advice that a director gives, is in the interest of the company first.

Conflicts of Interest

Sometimes a director might have the power to make a decision which he or she might benefit from personally, and might be tempted to take advantage of this. This leads to a **conflict of interest** and it means that a director may not be acting in the best interests of the company anymore. If this happens, then the director needs to take certain steps before being involved with the decision. For example, they may need the shareholders to approve the director taking part in the decision, or they may need to stand aside and not participate in that decision.

Care, diligence and skill

Directors must act with **care, diligence and skill**. For example, directors need to have a general understanding of the financial performance of the company in order to make decisions affecting the company. Decisions a director makes should be carefully considered, and they should ask any relevant questions to the company's management before making decisions.

If you are a director and you are specialized in a particular area, you would be expected to act in a way that anyone with that specialization would act. For example, if you are a qualified accountant, you would be expected to have a very good understanding of the financial position of the company, more so than a director with limited financial training.

The rules and the Companies Act

Each company has rules, and each company must also comply with the Companies Act. Therefore, each director must also comply with these requirements.

What does it mean if the company is insolvent?

A very important duty of the director is that you must take action if you believe that the company is insolvent. Insolvent means that the company has failed the solvency test, explained below.

The solvency test

The Companies Act requires directors to abide by a two-step test at all times:

1. The company must own more assets than liabilities.
2. The company must be able to pay all its debts as they fall due.

If the company is insolvent, then it is potentially trading with people knowing that it is unable to pay them. A business is not supposed to operate if it cannot pay its debts, because it puts third parties and its own shareholders at risk.

What if a director discovers that the company is insolvent?

The Companies Act requires a director to call a meeting of directors within 10 working days, and they need to decide if the company should appoint a liquidator, or continue to carry on business. A liquidator is somebody who will take over the company with the aim of distributing as much of the value left in the company to the creditors of the company.

Failure to call this meeting could mean that the director will have to **personally** pay any debts if the company was insolvent, and goes into liquidation.

What can happen if a director does not fulfill his or her duties?

First of all, a director who fails to fulfill her duties may have a negative effect on the success of the company.

Second, the Companies Act may disqualify a person from being a director, and may also impose a financial penalty.

The company, the shareholders, or a creditor (such as a bank) might also sue the director in some cases. A liquidator may also be able to sue a director in some cases.

Who can not be a director?

A person can not be a director of a company if he/she is:

- under 18 years of age
- an undischarged bankrupt
- prohibited from being a director or promoter of or being concerned or taking part in the management of a company under the Act
- a person in respect of whom a custody order is in force under section 18 or 41 of the Mental Treatment Act (Cap 103)
- not eligible because of requirements contained in the company's rules.

The director must also be a natural person (eg a director cannot be another company).

Notifying director changes

- Any changes in the directors of a company or information relating to the directors must be notified to the Registrar
- A new director must consent to act as a director.
- A director must provide a physical and postal address.

How many directors should a company have?

A company must have at least one director. However, when you form a company you can choose to appoint as many directors as you like. It is worth bearing in mind that people who accept directorships should be aware of the responsibilities that go with directorships.

Directors of community companies

Directors of community companies have special responsibilities, and further details are included in Factsheet 3, a guide to community companies.

Basically, directors will be required to do the following:



- File an annual return with the registrar of companies every year for the community company.
- Consult with and report on consultations with the community.
- Report to the registrar in the annual return how they have been paid or what benefits that have received.
- Keep track of and report in the annual return on the disposal of any assets, and follow the special procedures about assets in community companies.
- Report in the annual return explaining how the company's activities benefited the community.

Cautionary words regarding appointment of directors

Many people may associate some prestige with being a company director, however, it first comes with responsibilities.

By inviting a person to become a director of your company you are also potentially exposing him or her to the risks of the business and to the responsibilities that go with a directorship.

Directors should be capable of adding value to the business and they should be aware of the commitment required.

IMPORTANT NOTICE

The contents of this Director's Guide fact sheet are for guidance only. They are not legal advice.

The Registrar provides only general guidance and does not provide legal advice on individual cases.

Individuals should seek separate advice from a legal professional.