Becoming a Company Officeholder

Director and secretary responsibilities and obligations

What is a company officeholder?

Under Australian corporations law, directors and company secretaries are officeholders. They help govern the company and are legally responsible for aspects of its conduct and compliance. The role is not merely a title and cannot safely be treated as a favour or formality.

Duties arise under the Corporations Act 2001 (Cth), the company?s constitution, replaceable rules, contracts and general law. Some obligations continue after a person leaves office.

Director and secretary roles

- Directors make or oversee major decisions, monitor the company?s affairs and ensure it is properly governed.
- A secretary supports corporate administration and compliance, including required records, lodgements and notifications.
- A proprietary company must have at least one director ordinarily resident in Australia. Appointing a secretary is generally optional.
- A public company has additional officeholder and governance requirements.

Before accepting

Understand the company, its finances, ownership, business model, licences, disputes and governance. A person may face duties as a de facto or shadow director based on what they actually do, even without a formal title.

Appointment and eligibility

Basic steps

- Confirm you are at least 18 and are not disqualified or otherwise prohibited from managing corporations.
- Apply for and hold a director identification number before appointment where required.
- Provide written consent to act and ensure the company keeps that consent.
- Check the constitution, shareholders agreement and board process for a valid appointment.
- Ensure ASIC is notified of the appointment and correct personal details within the required time.
- Understand whether you are appointed as an executive, non-executive, alternate or nominee director, noting core duties still apply.

Due diligence before saying yes

- Review recent financial statements, management accounts, tax and superannuation position and cash flow.
- Identify loans, guarantees, security interests, related-party dealings and contingent liabilities.
- Check ASIC records, registers, minutes, licences, insurance and major contracts.
- Ask about current or threatened litigation, regulator inquiries and workplace or safety issues.
- Understand who controls information, banking, accounting and legal advice.
- Confirm directors and officers insurance and any deed of access, indemnity and insurance.

Never be a passive nominee

You must bring your own judgment to decisions. Acting only on another person?s instructions, signing unread documents or allowing your name to be used can create serious personal exposure.

Core duties and ongoing obligations

Duties of directors and officers

- Exercise care and diligence appropriate to the company and your role.
- Act in good faith in the company?s best interests and for a proper purpose.
- Do not improperly use your position or company information for advantage or to cause detriment.
- Disclose material personal interests and manage conflicts under the Act and company rules.
- Keep information confidential and avoid unauthorised personal use after leaving office.

Director oversight

- Monitor solvency and prevent the company incurring debts while insolvent where the statutory test is met.
- Ensure proper financial records are kept and understand the company?s financial position.
- Ask questions, test assumptions and obtain reliable information before approving decisions.
- Oversee tax, employee, superannuation, work health and safety, privacy and industry compliance.
- Ensure minutes, registers, annual reviews and required ASIC lodgements are properly managed.

Secretary responsibilities

A company secretary commonly coordinates board and member processes, statutory registers, minutes, annual-review tasks and ASIC notifications. The Corporations Act makes secretaries personally responsible for specified administrative contraventions. A secretary should maintain a compliance calendar, verify lodgements and escalate overdue or inaccurate information.

Risk management and first steps

Potential personal exposure

- Civil penalties, compensation orders, disqualification and, for serious dishonest or reckless conduct, criminal liability.
- Personal liability connected with insolvent trading, director penalty regimes, guarantees or specific legislation.
- Claims by the company, shareholders, creditors, regulators or an external administrator.
- Liability can arise from inaction as well as an affirmative decision.

Your first 30 days

- Confirm appointment, director ID, ASIC details, consent and access to company records.
- Read the constitution, shareholders agreement, delegations and recent board minutes.
- Review current financial information, forecasts, debts, taxes and upcoming payment obligations.
- Meet key advisers and understand reporting systems, controls and compliance deadlines.
- Declare interests, document conflicts and confirm how related-party decisions are handled.
- Establish a board and compliance calendar with clear responsibility for each action.
- Record questions and insist that unresolved risks return to the board promptly.

On resignation

Follow the constitution and legal process, notify the company in writing, confirm ASIC records are updated and retain lawful access to relevant records. Resignation does not erase liability for conduct while in office.

Key sources

- Corporations Act 2001 (Cth).
- ASIC guidance: Company officeholders and obligations of company officeholders.
- Australian Business Registry Services guidance on director identification numbers.

Understand the company before accepting the office

Monardo Legal | (02) 8006 5244