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CHARTERED ACCOUNTANTS

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Company directors – the risks

The risks that company directors face include potential personal liability and prosecution (including fine or imprisonment) under a wide variety of legislative provisions. The list of laws below gives you an overview and is by no means exhaustive.

Taxation and revenue laws

In broad terms the areas to watch out for include:

- Income tax (including PAYE and withholding taxes);
- Goods and services tax (GST);
- Customs and excise;
- Fringe benefit tax (FBT); and
- Accident compensation levies.

Building Act 1991

The Building Act contains the requirements that all new building work must comply with. These requirements relate to the functional requirements of buildings.

Directors can be held personally liable where the company breaches the Act. Fines range from $5,000 to $200,000.

Commerce Act 1986

This Act prohibits anti-competitive behaviour, ie anti-competitive arrangements between competitors (price-fixing) or use of a dominant position in the market place (resale price maintenance).

The Act also prohibits the acquisition of a business if it will result in either the business taking a dominant position, or the strengthening of a dominant position.

A director may be liable on conviction for a fine of up to $500,000 or to imprisonment for a term of up to 5 years for breaching the Act. Courts will order a penalty against an individual unless there are good reasons not to do so.

Employment Relations Act 2000

Under this Act, a labour inspector can commence an action against a company to recover minimum wages or holiday pay payable to an employee. If it is established that the amount is unlikely to be paid in full, the Employment Relations Authority can authorise the labour inspector to bring an action for recovery of that amount against the company director.

If it is proven that the director directed or authorised the default in payment, the director is liable to pay the amount recoverable.

Fair Trading Act 1986

The Fair Trading Act prohibits misleading and deceptive conduct in trade. A breach of this Act can render a director liable to a criminal conviction and a fine of up to $200,000.

Financial Transactions Reporting Act 1996

This Act applies to financial institutions and those professionals who handle money, eg lawyers. It requires the gathering of appropriate information on the identity of depositors and other related information designed to prevent money-laundering.

Directors of financial institutions (and their legal advisers) should make themselves aware of the legislation following the successful prosecution of a lawyer for failure to comply with the Act.

A breach of this Act could result in imprisonment for individuals, together with fines of up to $20,000 for an individual and $200,000 for a body corporate.

Health and Safety in Employment Act 1992

This Act contains requirements relating to the provision of a safe and healthy work environment. Employers are primarily responsible under the Act. However, where a company fails to comply with the Act, its directors who 'directed, authorised, assented to, acquiesced in or participated in, the failure' are also liable to a maximum fine of $500,000 or imprisonment for a period of up to 2 years.

Income Tax Act 1994

Where an arrangement has been made for the purpose of depleting a company's assets so that it is unable to pay tax debts, the Income Tax Act 1994 contains a special provision directing the tax liability of the company to its directors.

Resource Management Act 1991

This Act imposes a resource consent procedure that applies where a proposed business activity will have effects on the environment.

A director may be civilly and criminally liable if their company breaches the Act. Criminal penalties can be up to a maximum of $200,000, plus $10,000 per day for each day the offence continues, and imprisonment for a period of up to 2 years.

Securities Act 1978

This Act imposes a disclosure regime relating to the offer of securities (eg shares) to the public.

The disclosure regime contains requirements relating to prospectuses, investment statements, and advertisements. A director can be held civilly liable if an advertisement is untrue or omits a material particular, and can be ordered to compensate people who subscribed for any securities on the faith of the advertisement for any losses or damage sustained.

A director can also be criminally liable for a maximum penalty of 5 years' imprisonment, or a $300,000 fine, where an advertisement or prospectus containing an untrue statement is distributed. Directors of promoters are also liable.

Tax Administration Act 1994

This Act contains requirements relating to record keeping and the filing of tax returns. It renders directors liable where an offence is committed by a company by, or with the knowledge of, a director.

Maximum penalties of up to $50,000 and/or 5 years' imprisonment apply.

See us first

- To assist you in meeting the necessary legal or financial requirements.
- If you consider that any of the issues contained in this fact sheet may affect you.