

3 Part Checklist for your journey of directorship

1. Set-up checklist

Are you aspiring to become the director of a new company? If you have your sights set on this leadership role, this checklist outlines the essential steps you need to take before embarking on your journey. It provides a clear roadmap, highlighting key items that need your attention and must be routinely checked off. In addition, the checklist sheds light on the underlying duties that come with the director position, emphasizing the need for thorough consideration whenever you make decisions that impact the company's direction and success.

Your duties	Source	Summary	Director's Notes	✓
Obtain consents of proposed members	s 120 CA	<ul style="list-style-type: none">• Obtain written shareholder consent when the company is first registered.• You may use this ASIC template.• Keep this on file in a safe place.		
Obtain consents of proposed directors	s 201D CA	<ul style="list-style-type: none">• Obtain written consents for each person who will be appointed as a director, before appointment.• You may use this ASIC template.• Keep this on file in a safe place.		
Obtain consents of proposed company secretary	s 204 CA	<ul style="list-style-type: none">• Obtain written consent from the company secretary, before appointment.• You may use this ASIC template.• Keep this on file in a safe place.		

CA is a reference to the *Corporations Act 2001* (Cth)

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Obtain director IDs	s 1272 CA	<ul style="list-style-type: none">• A director identification number (DIN) is a unique identifier that prevents the use of false or fraudulent director identities.• Since 1 November 2022, all directors must hold a DIN.• Director IDs can be applied for online, via this link.		
Select a registered office	s 121 CA s 142 CA s 109X CA	<ul style="list-style-type: none">• You must pick an official address for your company.• Legal notices (like ASIC correspondence) will be sent here.		
Select a principal place of business	s 117 (2)(j) CA s 146 CA	<ul style="list-style-type: none">• You must pick a 'principal place of business'.• This can be the same as your registered office.• This cannot be a P.O. Box.		
If using someone else's address, obtain their consent first	s 143(1) CA	<ul style="list-style-type: none">• You must obtain written consent of the occupier (typically a lawyer or accountant) to use their office as your registered office or principal place of business.• Note, your accountant and lawyer may charge a fee for this service.		

Set-up Checklist (continued)

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Your duties	Source	Summary	Director's Notes	✓
Prepare a company constitution (or rely on the replaceable rules)	s 136 CA or s 135 CA (as at s 141 CA)	<p>Companies are governed either through a written company constitution, or by the replaceable rules in the CA.</p> <p>If you adopt a constitution:</p> <ul style="list-style-type: none"> • on registration – you will need each proposed initial shareholder's written consent to the terms of the constitution; or • after registration: a special resolution of the company will be required to adopt a constitution. <p>If you rely on the replaceable rules:</p> <ul style="list-style-type: none"> • <u>read the rules</u> to understand your obligations. 		
Prepare a Shareholders Agreement		<p>Shareholders Agreements are not legally required, but they are a critical document. They set out the expectations, obligations, consequences and rules of conduct between:</p> <ul style="list-style-type: none"> • the company and shareholders; • the board and shareholders; and • shareholders and each other. <p>Shareholders agreements include:</p> <ul style="list-style-type: none"> • how decisions are made; • who has a vote; • how shares are sold, bought, transferred, and issued; and • what happens when shareholders get into a dispute. 		
Register the company	s 117 CA	You are ready to lodge your application for registration with ASIC after considering all of the above checklist items.		

Set-up Checklist (continued)

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Your duties	Source	Summary	Director's Notes	✓
Repeat for group company structures		If you are setting up a group structure with multiple companies, the above steps must be repeated for each individual company registered.		
Register a business name if required	ASIC RG 235 (Registering your business name)	<p>If you intend to trade under a different name to your company name, you will need to register a business name.</p> <p>This may look something like:</p> <ul style="list-style-type: none">• Company Name: Smith Family Operations Pty Ltd• Business Name: South Melbourne Fruit Supply		
Open a bank account		Whilst not a legal requirement, having a business bank account will make business and recordkeeping easier.		

Set-up Checklist (continued)

2. Ongoing Requirements Checklist

As a director, it's your responsibility to maintain tight administrative systems to ensure your company is meeting all legal obligations and is protected from threats to its commercial reputation. You're required to make sure the following documents and processes are kept up-to-date, to a high standard, and reflect industry best-practices.

Your duties	Source	Summary	Director's Notes	✓
Maintain financial records	s 286 CA	You must have written records to record and explain the company's: <ul style="list-style-type: none">• transactions;• financial position; and• performance.		
Maintain a board minute and resolution book	s 251A CA	<p>A minute book must be kept for all meetings of the board (your directors). You must record , within 1 month of each meeting or decision made:</p> <ul style="list-style-type: none">• the proceedings of meetings;• the resolutions of meetings; and• any resolutions passed without a meeting (circular written resolutions). <p>Minutes must be signed by the meeting's chair or the chair of the next meeting.</p>		

2. Ongoing Requirements Checklist

Your duties	Source	Summary	Director's Notes	✓
Maintain a company minute and resolution book	s 251A CA	<p>Keep an up-to-date record of meeting minutes. Update your records within 1 month of every shareholders meeting or decision, including:</p> <ul style="list-style-type: none"> the proceedings of meetings; the resolutions of meetings; and resolutions passed without a meeting (circular written resolutions). <p>Minutes must be signed by the chair of the meeting, or the chair of the next meeting.</p>		
Maintain a register of members	s 169 CA	<p>Keep a register of all shareholders in your company, including these details:</p> <ul style="list-style-type: none"> name; address; and the date when they became a shareholder. <p>Former members should remain on the register, too – noting:</p> <ul style="list-style-type: none"> their name and details; and the date when they stopped being a shareholder. <p>For each shareholder, you must record:</p> <ul style="list-style-type: none"> the date each allotment of shares takes place; the number of shares in each allotment; the shares held by each shareholder; the class of shares; the share numbers (if any), or share certificate numbers (if any), of the shares; and the amount unpaid on the shares (if any). 		

Ongoing Requirements Checklist (continued)

2. Ongoing Requirements Checklist

Your duties	Source	Summary	Director's Notes	✓
Maintain a register of optionholders	s 170 CA	<p>Keep a register of all optionholders in your company, including these details:</p> <ul style="list-style-type: none"> • name; • address; • the date on which the entry is made in the register; • the date of grant of the options; • the number and description of the shares or interests over which the options were granted; • either: <ul style="list-style-type: none"> ◦ the period during which the options may be exercised; or ◦ the time at which the options may be exercised; • any event that must happen before the options can be exercised; • any consideration for the grant of the options; and • any consideration for the exercise of the options or the method by which that consideration is to be determined. <p>Remember to update the register 14 days after each grant, exercise or expiry of options. Keep copies of all documents which grant options on file.</p>		
Maintain a register of debenture holders	s 171 CA	<p>A register of debenture holders must be maintained, including the:</p> <ul style="list-style-type: none"> • name and address of the debenture holder; and • the amount of the debentures held. 		

Ongoing Requirements Checklist (continued)

2. Ongoing Requirements Checklist

Your duties	Source	Summary	Director's Notes	✓
Maintain a register of charges	s 271 CA	<p>You must keep a register of charges if the company gives a bank, trade creditor or anybody else a charge over company assets.</p> <p>If charges are granted or acquired, the register needs to include:</p> <ul style="list-style-type: none"> • the date of the charge; • a short description of the liability; • a short description of the property charged; and • the holder/trustee of the charge. 		
Prevent insolvent trading	s 588G CA	<p>Make sure you know the company will still be able to pay all of its debts as and when they fall due, including when:</p> <ol style="list-style-type: none"> 1. Paying a dividend. 2. Reducing some types of share capital. 3. Buying back shares. 4. Redeeming preference shares. 5. Issuing preference shares. 6. Financially assisting someone to buy shares. 7. Entering into an uncommercial transaction. <p>You may be held personally liable if you knew the company would be insolvent, and incurred more debt anyway.</p>		

Ongoing Requirements Checklist (continued)

2. Ongoing Requirements Checklist

Your duties	Source	Summary	Director's Notes	✓
Ensure the company pays its taxes	PAYG and SGC related tax laws	<ul style="list-style-type: none"> • Make sure the company meets its Pay As You Go (PAYG) and Superannuation Guarantee Charge (SGC) obligations. • Review on a quarterly basis, and every EOFY. • You may be personally liable for company tax debts if they remain unpaid. 		
Pay an annual fee and prepare a solvency resolution	s 345A, s 347A	<p>ASIC sends companies an annual review statement on each anniversary of their incorporation. Each year, you must;</p> <ul style="list-style-type: none"> • Pay the annual fee; • Update your company details with ASIC (if anything has changed); and • Pass a board resolution confirming your company is still solvent • Lodge a director's statement in relation to company solvency (form 485) with ASIC. <p>In 2023, the annual review fee for a proprietary company is \$310.</p>		

Ongoing Requirements Checklist (continued)

3. Director's Duties Checklist

Your responsibilities as a director are underpinned by fundamental duties, known as director's duties. These duties are set out in both the Corporations Act and in a long history of common law. Any action you take must conform to the following duties.

These duties can extend to non-director officers and key players within a company, even if the people involved don't officially hold an office. The key determinator is whether a person holds substantial influence over the decisions made by the company. It's also important to note that directors of public companies have additional requirements under the ASX listing rules.

Keep this checklist of director's duties in mind any time you need to make a big decision about the future of your company.

Your duties	Source	Summary	Director's Notes	✓
Exercise due care and diligence	s 180(1) CA	<p>Make decisions expected of a reasonable person in your shoes. Examples of due care and diligence in decision-making include:</p> <ul style="list-style-type: none">• Making decisions in good faith and for a proper purpose.• Not having a material personal interest in decisions you make for the company.• Informing yourself about the subject matter of the decision to an appropriate level.• Believing that the decision is in the best interests of the corporation.		
Act in the best interest of the company and for a proper purpose	s 181 CA	<ul style="list-style-type: none">• Do not act dishonestly, with dishonest intention, or recklessly.• You must act in the interest of the company, not consciously doing anything against that interest.		

3. Director's Duties Checklist

Your duties	Source	Summary	Director's Notes	✓
Do not use your position to gain an advantage	s 182 CA	Even where you do not gain an advantage, you risk breaching this duty if you cause detriment to the company because of your improper use of your position of power.		
Do not use information you learned from your position to gain an advantage	s 183 CA	Similar to the duty not to use your position to gain advantage, you also cannot use information you obtain through your directorship to gain an advantage or cause detriment to the company.		
Avoid actual and potential conflicts of interest	s 191 CA	<ul style="list-style-type: none">• Disclose material personal interests in matters that relate to the company.• Disclose potential conflicts of interest to other directors.• Avoid voting on matters where you have a conflict of interest.		

Director's Duties Checklist (continued)

Note: While these duties apply to directors of all companies, there are extra requirements that apply to large companies, public companies, directors of corporate trustees, and directors of other entities. For example, s 292 of the Corporations Act 2001 (Cth) requires some companies to prepare annual financial and director's reports. This only applies if your company has over 50 employees, earns more than \$25m in revenue, or holds more than \$12.5m in assets.

While this checklist is a helpful guide to help better understand director's duties, it is not a comprehensive guide and, therefore, may not be fit for your particular situation.

Get in touch with our team today via contact@burchcolawyers.com.au to find out if you're meeting your expected requirements as a director.