Directors: Obligations to external administrators

Information sheet – 53

> This is **Information Sheet 53 (INFO 53)**. It provides general information for company officers about their obligations when a company is insolvent.

Your obligations

> To avoid penalties, company officers must assist the external administrator or receiver.

Company officers and other people with relevant books and records have a responsibility to the company, creditors and community – and cannot obstruct duly appointed external administrators or receivers in the performance of their duties.

If an external administrator or receiver has been appointed over a company, or assets of a company, with which you are associated, the Corporations Act 2001 (Corporations Act) requires:

- certain company officers (such as directors) to provide the external administrator or receiver with:
  - a Report on Company Activities and Property (ROCAP). Where external administrators or receivers have the company's books and records, company officers may ask the external administrator or receiver to allow them access to records to complete and provide a ROCAP
  - books, records, information and assistance
- other persons who have any books, records and/or assets of the company to disclose their existence and, where requested, provide them to the external administrator.

Substantial penalties may apply

Where a company officer fails to comply with their responsibilities, the external administrator or receiver may refer the matter to us. Referrals have frequently resulted in ASIC taking court action to assist the orderly realisation of assets or to force directors to provide ROCAPs and/or books and records. Failure to provide a ROCAP or disclose and deliver books and records are a serious breach of the Corporations Act.

Penalties imposed by the court may include fines of over $10,000 or imprisonment for breach of certain obligations by an officer.

If an officer fails to comply with court orders to fulfil their responsibilities within the required time, they may commit a continuing offence and be liable to further prosecution. A continuing offence can attract an additional daily fine until the obligation is complied with.

Key sections of the Corporations Act

Relevant sections of the Corporations Act for a company in external administration or whose assets are under the control of a receiver are listed below. For full details of your responsibilities see the Corporations Act. You may want to seek your own legal advice on how to comply with these and your other legal obligations.

section 429 – Officers to report to controller about corporation's affairs

section 430 – Controller may require reports

section 431 – Controller may inspect books

section 438B – Directors to help administrator

section 438C – Administrator's rights to company's books

section 475 – Report as to company's affairs to be submitted to liquidator

section 530A – Officers to help liquidator

section 530B – Liquidator's rights to company's books

section 590 – Offences by officers of certain companies

section 1314 – Continuing offences

Schedule 3 – Penalties

More information

- Insolvency for liquidators

- Contact ASIC

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

> Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.
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