

Recession Manager: Directors' liabilities

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Directors' liabilities: what are they, how do they arise, and can they affect you?

For most in business, times are tough. As a director, there is a risk that in certain circumstances you can become liable for the debts of your company.

What do you need to do as a director to avoid any personal liability? Asking yourself the following questions may provide some answers.

General

- Do you know what your duties to the company are?
- Do you understand what the financial position of the company is?
- Do you know the projected cash flow, what significant obligations are looming, and how much work is in the pipeline for the company?
- Are you sure the company's accounting records comply with the Financial Reporting Act?

If the company is failing

- Do you know your duties when a company is approaching insolvency?
- Are you, as a director, aware of the rules around reckless trading?
- Do you know the rules and responsibilities that apply to 'sleeping' directors?
- Did you know that even if the Companies Office does not record you as being a director, the courts could still find that you are if you are a 'shadow director'?
- Have you ever received salary or other payments from the company? If yes, has the company complied with section 161 of the Companies Act? If not, you could be liable to repay those payments.

How can you protect yourself?

- Be aware of your duties to the company and act in accordance with them.
- Have you divested your personally owned assets into a trust? If not, act now. The best time to do this is before you are actually facing personal liability

Have you done everything you possibly can to minimise your risk as a director?

The risk of incurring personal liability by being a director is nothing new. The important thing is to seek advice so you are aware of your duties and, if the company is insolvent or nearing insolvency, you can ensure whether there are reasonable grounds for allowing the company to continue to trade.

For advice on directors' liabilities or any other legal issues, contact one of Kensington Swan's experts.



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This edition of Recession Manager was compiled by Nick Scott, a partner at Kensington Swan. Recession Manager is a series of articles that provide practical tips to help you and your business survive and prosper during the economic downturn.

Read Nick Scott's full article on directors' liabilities in the April issue of The Director, a regular supplement in NZ Management magazine.