

Info Pack on being a New Zealand Resident Director



Produced by Private Box Limited

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Last updated: 8th July 2015

Version 2

1. INTRODUCTION

There are changes to NZ law that will affect all New Zealand registered companies. There will be more requirements for the identity of directors (such as date and place of birth), identifying who ultimately owns a company and the requirement of a New Zealand based director.

This info pack will give you a summary of the learnings we have gained while we have been providing resident director's services.

If you are interested in receiving a quote from us please complete the form in Appendix 1 – Request a Quote and return to us at sales@privatebox.co.nz.

Contained in the info pack is:

1. Details of law changes
2. Being a director – what does it mean?
3. Best practise
4. How we can help

Disclaimer: This document does not substitute legal or financial advice. We are not qualified to give this type of advice. If you are entering into a director's position we recommend taking legal advice.

2. DETAILS OF THE LAW CHANGES

From the 1st May 2015 all new companies will be required to have a NZ based director and from the 28th October 2015 **all existing companies** need to have a NZ based director in order to stay on the NZ Companies Register.

For a full details of these changes and when they are being implemented please see below -

1 May 2015	All New Zealand companies incorporated after 1 May 2015 will be required to provide: <ol style="list-style-type: none">1. The dates and places of birth for all directors (not publicly visible)2. At least one director that either lives in New Zealand; or lives in Australia and is a director of a company incorporated in Australia<ol style="list-style-type: none">1. If it is an Australian based director then the companies Australian Business Number is required3. Details of any Ultimate Holding Company (if applicable).
1 July 2015	All New Zealand companies incorporated prior to 1 May 2015 filing annual returns after 1 July 2015 will be required to provide: <ol style="list-style-type: none">1. The date and place of birth of all directors (not publically visible)2. Details of any Ultimate Holding Company (if applicable). <p>Note – if company fails to file the annual return then removal from the company register is likely.</p>

28 October 2015 All New Zealand companies will be required to have at least one director that either lives in New Zealand; or lives in Australia and is a director of a company incorporated in Australia by 28 October 2015.

When filing annual returns after 28 October 2015 New Zealand companies will need to indicate whether any director living in Australia is also a director of a company incorporated in Australia. They will also need to provide details of one of those Australian companies (ACN, name and registered office address).

3. BEING A DIRECTOR – WHAT DOES IT MEAN?

We will give you an overview of what it means to be a director. The Companies Act 1993¹ sets out the rules for the behaviour of directors and companies which we will summarise below.

3.1. COMPANY CONSTITUTION

A company's constitution (optional) also plays an important role in determining how a company and their directors operate. A constitution is a formal document agreed to by the shareholders of the company. A constitution sets out the rights, powers and duties of the company, the board, each director and each shareholder.

3.2. ACT IN GOOD FAITH AND IN THE BEST INTERESTS OF THE COMPANY

A director of a company must act in a way that is consistent with the Companies Act and the company's constitution. If not constitution is used by the company then the director duties will be solely defined by the Companies Act.

Directors must act honestly and in the best interests of the company and with reasonable care. The companies act refers to acting in "good faith" – said another way, acting with proper motive and avoiding conflicts of interest. Often this means you need to record decisions you have made and why you have made them – although we will cover this in the following section "Best Practise".

While acting with a proper purpose and good faith measures your motive for doing something there are quite a few pieces of legislation that you need to be aware of when acting as a director. The main ones are:

- Privacy Act
- Health & Safety in Employment Act
- Resource Management Act
- And don't forget the Companies Act and the Companies Constitution (if there is one).

And depending on the industry you are involved with, there might be other acts that are worth a look:

- Hazardous Substances Act
- Building Act
- Fire Service Act

¹ <http://www.legislation.govt.nz/act/public/1993/0105/latest/DLM319570.html>

- Local Government Act
- Smoke-free Environments Act
- Land Transport Act
- Ozone Layer Protection Act
- Radiation Protection Act
- Waste Minimisation Act
- Agricultural Compounds and Veterinary Medicines Act
- Biosecurity Act

You need to declare any conflicts of interest (you can even maintain an “interests” register to be fully open about this) and you must take care with company information.

3.3. RECKLESS TRADING

A director must not let their company become insolvent. You are insolvent when you can no longer pay your debts as they come due. Directors need to take care here - if the company makes large financial decisions that may result in being reckless (eg. trading while insolvent) the director may be held personally liable.

The solvency test is defined as

- The company must be able to pay all its debts as they fall due in the normal course of business
- The company must own more assets than liabilities.

3.4. DIRECTOR'S DUTY OF CARE

All directors are required when exercising powers or performing duties do so with care, diligence and skill that a “reasonable” director would exercise in the same circumstances. This means you need to be involved in the company, know what’s happening and be engaged in decision making.

However - you are not expected to know everything. It is ok to rely on the advice and information of others given this is reasonable to do so. Or said another way, don’t rely all on just one person’s opinion - seek more than one, from qualified people. And document you have done this.

A company cannot make promises it cannot delivery on. The director needs to make sure this doesn’t happen.

3.5. RECORD KEEPING

There are certain documents that must be prepared and filed with the Companies Office. In general directors are responsible for ensuring the various filing requirements are met.

The Act requires a company to keep company records at its registered office although there are exceptions to this (such as up to date share register).

Directors must ensure that accounting records are kept although it is not necessary for the records to be kept in New Zealand.

3.6. MEETINGS

The board of directors is responsible for calling meetings of shareholders as required by the Act and the company's own constitution. This includes calling an annual meeting (AGM) of

shareholders. Although you can agree not to have an annual meeting - but this must be recorded and agreed to by all directors.

4. BEST PRACTISE

When becoming a director of a company we find the best things you can do to help yourself are:

- 1) Read and understand the company constitution. These can be complicated documents and you will benefit from having your lawyer take a look at this on your behalf - make sure you are comfortable to the duties you will be bound to.
 - a) If the company does not have one you can create one - we can provide a clear, simple constitution that protects the director as much as possible under New Zealand law (for \$500NZD + gst).
 - b) If the company already has a constitution we can have our lawyer check it and recommend any changes (cost starts from \$500NZD).
- 2) You need to ensure you have directors liability insurance. We normally make this part of the company's constitution.
- 3) Ensure there is a proper board structure (eg. Chair person etc).
- 4) Ensure you have visibility to all bank accounts.
- 5) Ensure you have full disclosure of all company practises and indemnity from anything that you don't know about.
- 6) Ensure you attend all board meetings.
- 7) You specify in your contract and / or the constitution how you can remove yourself as director if the above are not met.
- 8) And paper trail, paper trail, paper trail - remember: you can only prove something happened if it is written down.

5. HOW WE CAN HELP?

Private Box can find your company a resident director or you can contract Private Box directly to supply these services. We can also help preparing constitutions and contracts for employing a director.

To help us provide a quote of what this might cost please complete the questionnaire in Appendix 1 and send to sales@privatebox.co.nz. Or you can complete the online version of this form here <https://docs.google.com/forms/d/1VNGFwYr1L0iHeeiDvwn6GodkDLumsOQaJpf-F1SqSKQ/viewform>.

6. REFERENCES

<http://www.chapmantripp.com/publications/Pages/All-care-all-responsibility-duties-of-an-alternate-director.aspx>

<http://parryfield.com/duties-and-liabilities-imposed-on-a-director-of-a-new-zealand-company/>

http://www.waikato.ac.nz/law/research/waikato_law_review/volume_2_1994/3

<http://www.legislation.govt.nz/act/public/1993/0105/latest/whole.html>

<http://www.business.govt.nz/companies/about-us/legislation>

<http://www.boardroompractice.co.nz/files/98/file/director-and-board-pdf>

7. APPENDIX ONE – REQUEST FOR QUOTE: NZ RESIDENT DIRECTOR

1. Name of company: _____
2. What is the purpose of the company? Asked another way, why does this company exist?

3. Annual Turnover (approx.): _____
4. Number of employees / contractors: _____
5. Countries of operation: _____
6. Does the company have an existing constitution? Please circle one: Yes No
7. What is the current board structure? _____

8. Who is the ultimate owner of this company? _____
9. How many board meetings does the company currently have per year? _____
10. Will the amount of board meetings change once a NZ based director has joined the board?
If so – please give details:

11. What are the average length of board meetings? _____
12. Bank accounts:
 - a. How many bank accounts does this company have? _____
 - b. In what countries? _____
13. Your NZ based director must have visibility to all bank accounts. Is this possible? Please circle one: Yes No
14. Does the company currently use any software to manage its governance?

15. Security / Deposit:
 - a. It is possible for the New Zealand director is personally liable for the conduct of the company. To this end what kind of security can you offer a potential director

of your company?

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b. What is the NZD dollar value of this security?

16. Would you be interested in having experts give advice at board meetings when and where appropriate? Please circle one: Yes No

17. Does your company own any of the following in New Zealand:

- a. Cash Assets: Yes No
- b. Property: Yes No
- c. Trademarks: Yes No
- d. Equipment / plant: Yes No
- e. Stock: Yes No
- f. Any other assets (please describe):

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18. Does the company have a current business plan? Please circle one: Yes No

19. Are the other directors of the board happy to have police checks conducted of their background? Please circle one: Yes No

20. Do you have any current relationships with a NZ based lawyer or accountant? Yes No

a. What are their contact details:

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21. Customer References:

a. Please identify at least two customers who we can contact for a reference

- i.

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- _____
-
- ii. _____
-
- _____
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Signature: _____ Date: _____

Signed by: _____

Position: _____