



CLIENT INFORMATION BULLETIN

MACGILLIVRAYS

S O L I C I T O R S

SO... YOU WANT TO BE A DIRECTOR? USEFUL INFORMATION YOU SHOULD KNOW!

'ASIC will not hesitate to disqualify company officers who disregard their obligations under the law.'

ASIC's Deputy Executive Director of Consumer Protection,
Ms Delia Rickard - December 2006.

With the recent disqualification of nine Directors by the Australian Securities and Investment Commission (ASIC), it is important that any person acting as a Director knows the duties they have to the Company and Shareholders.

CAN YOU BE A DIRECTOR OF A COMPANY?

There are certain rules regarding whether someone is entitled to be a Director of a company.

If you:

- are an undischarged bankrupt; or
- are subject to a personal insolvency agreement or an agreement under Part X of the *Bankruptcy Act 1966* that has not been complied with; or
- are subject to a composition under Part X of the *Bankruptcy Act 1966* and final payment has not been made; or
- have been convicted of various offences such as fraud or offences which related to previous breaches of your duties as a Director, or insolvent trading;

then, in order to be appointed a Director of a Company a you will require the Court's consent.

Note - You cannot manage a Company if you are prohibited from being a Company Director or Secretary. It is an offence to appoint 'dummy' Directors whilst you, as a disqualified Director manage and run the Company.

WHAT ARE A DIRECTOR'S DUTIES?

Part 2D of the *Corporations Act 2001* details a Director's duties to their Company. One of the paramount duties of a Director is to discharge their duties and powers "in good faith, in the best interests of the Company and for a proper purpose". It is important when making decisions for your company that any personal interests you may have are disclosed. The Company's, shareholders' and creditors' interests should always take precedence over your own personal interests.

E.G. ASIC found that Mr Domenico Ferrara (a former FAI Director) had failed in his duty to separate his personal interests from the Company by using company funds to pay electricity, water bills, council rates, a speeding fine and his daughter's wedding. These payments occurred only three days before a liquidator was appointed to FAI. Mr Ferrara was consequently banned from being a Director.

As a Director or Secretary of a Company you have a duty to:

- know what the Company is doing;
- keep accurate financial records of the Company's activities;
- ensure that the Company can pay its debts on time and is solvent;
- not allow the Company to trade whilst insolvent;
- keep records of general meetings, Directors' meetings, and any charges over a Company.

CONTINUED OVERLEAF



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In This Issue

SO... YOU WANT TO BE A DIRECTOR? - USEFUL INFORMATION YOU SHOULD KNOW!

Page 1

RUGBY WORLD CUP 2007!

Page 2

ABOUT US

Page 3

MACGILLIVRAYS PERSONAL INJURY TEAM DELIVERS A GREAT RESULT

Page 3

MACGILLIVRAYS PARTNER DELIVERS PAPER AT INTERNATIONAL CONFERENCE

Page 4

WHAT'S NEW?

Page 4

THE LIGHTER SIDE

Page 4

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SO... YOU WANT TO BE A DIRECTOR?

USEFUL INFORMATION YOU SHOULD KNOW!

Financial records are needed to explain the Company's financial position and performance.

Most Companies have to lodge financial records every year with ASIC with the exception of a 'small proprietary company'. **Records that relate to the transactions of the Company must be kept.**

These include, but are not limited to:

- General ledgers recording transactions, revenues, expenses, assets, liabilities and balance;
- Cash records - bank statements, deposit books, cheque butts, petty cash records;
- Debtors' records - a list of debtors, their balances, delivery dockets and invoices;
- Creditors' records - purchase orders, invoices, statements of received and paid, unpaid invoices, list of all purchases;
- Wages and Superannuation records;
- Registers of property, plant and equipment;
- Inventory records;
- Investment records;
- Tax returns and calculations;
- Deeds and Contracts.

It is also normal for Companies to prepare statements regarding the company's financial position, performance and cash flows. These reports should be prepared monthly to keep an accurate record of what is going on in the Company. All transactions should be documented and recorded accurately and completely.

One of the most common grounds for the disqualification of a Director by ASIC is for trading whilst insolvent.

A Company is deemed insolvent if it cannot pay its debts when they become due and payable. As a Director you are required to ensure that the Company does not incur a debt when it is insolvent. You must, on reasonable grounds, believe that the Company is able to pay a debt when it becomes due. This is important because not only can you be banned from being a Director, but your personal assets as well as the Company's assets may be seized to pay creditors.

Common indications that a Company is insolvent include, but are not limited to:

- low or negative cash flows;
- problems paying creditors on time, or meeting loan repayments;
- operating costs higher than profits;
- more liabilities than assets;
- difficulty keeping within overdraft limits;
- legal action taken by suppliers or other creditors for money that is owed.

As a Director you should not assume that the Company can trade out of the problem. If the Company is experiencing any financial difficulty it is prudent to immediately consult with a professional. It should be noted that there are substantial penalties, including criminal prosecution, which may be commenced against you as a Director.

If you are a Director of a Company you should never think of your role as one of 'just sign here'. Civil and criminal liabilities attach to Directors who act recklessly, are negligent and/or breach their duties. It is important to maintain an active role in the business, keep all records and seek professional advice on issues so that you can make an informed decision.

ASIC takes breaches very seriously. If you have any queries about how to best perform your duties as a Director contact our Corporate & Business Services Group for further information.

BY KATRUSHA ZALUCKI
Graduate Law Clerk
Corporate & Business Services



COMMERCIAL LITIGATION WORKPLACE HEALTH
& SAFETY MEDIATION INTELLECTUAL PROPERTY
LITIGATION DEBT RECOVERY PERSONAL INJURY
BANKING DEFAULT CORPORATIONS LAW
CONTRACTUAL DISPUTES SHAREHOLDERS ACTIONS
PARTNERSHIP DISPUTES PRODUCT LIABILITY
INSOLVENCY ENVIRONMENTAL LAW
JUDICIAL REVIEW TRADE PRACTICES

RUGBY WORLD CUP 2007!

Whilst the 2007 Rugby World Cup is being played in the wrong hemisphere, MacGillivrays is not missing out on socialising with former Wallaby greats. We think our Senior Associate, Anthony Williams bears a strong resemblance to Wallaby great, Matthew Burke. What do you think?

Unfortunately for Anthony, he hasn't been called up to the side and will be working in our Brisbane office during the September / October Tournament.

Go the Wallabies!



ANTHONY
WILLIAMS
Senior Associate



MATT BURKE
Wallaby Great!

ABOUT US

MACGILLIVRAYS' EFFORTS HELP RETAIN AND NUTURE EAGER GENERATION "Y" S

It is a common in today's business world to hear employers express great concern about staff retention, especially in relation to Generation Y (that is, young professionals in their early to mid 20s).

The problem isn't going to go away as more and more Generation Ys enter the workplace. They are eager to learn and want to continue to develop. They also want to do this whilst experiencing life - often wanting to work overseas. If their desires are not met they are inclined to go in search of another employer.

If companies don't figure out a way to develop and motivate these individuals they will leave to find another place where they will grow and develop. One consultant wrote recently, "companies must find a way for employees to leave without really leaving your company."

AT MACGILLIVRAYS - WE THINK WE HAVE DONE JUST THAT!

Law firms are not immune to the demands of Generation Y. Whilst some firms have given up trying to develop systems to retain their Generation Ys (and thereby incur more cost in hiring and retraining somebody new) MacGillivrays has indorsed a plan which has resulted in junior professionals staying with the firm, whilst working and travelling overseas.

MacGillivrays has always believed in a true work life balance. Unfortunately, that is a slogan which is paraded around at most career expos and work interviews but is rarely implemented. **To implement a true work life balance requires flexibility, ingenuity and understanding on behalf of both the employee and employer.**

Recently at MacGillivrays we offered a senior solicitor, who had expressed a desire to travel overseas, the opportunity to travel for 6 months and to then return to his current position. **MacGillivrays offered flexibility as well as security.** Whilst the young employee may have wanted to travel for longer, the knowledge of a job kept open provided recognition of a job well done and offered the desired security.

Similarly, rather than cut all ties with another young solicitor who has left for a long term overseas adventure, MacGillivrays has implemented a plan whereby the employer and employee remain in regular contact and we do what we can to assist the young solicitor to find work. This approach benefits not only the employee whilst overseas but ultimately MacGillivrays if the employee seeks re-employment.

Our Knowledge Manager continues to work for MacGillivrays albeit from Boston, United States of America. Due to a family member being awarded a prestigious medical fellowship with a US hospital affiliated with Harvard Medical School, our Knowledge Manager had little choice but to move to America. Through flexibility, understanding and ingenuity, and the use of technology MacGillivrays has retained an employee with little expense and inconvenience.

We understand and accept that today's young employees are adventurous and want to travel. Most young professionals have spent a long time studying and seek time to explore and challenge themselves in a different context.

Companies, including law firms must have systems in place so that employees can move around the company (such as a rotational system) continue to learn new products, services, systems, operations, work with new mentors and meet new employees. Sounds easy but it isn't. The MacGillivrays experience has been to implement systems and plans which are flexible, ingenious and which understand the needs of Generation Ys.

We recognise that despite being flexible, ingenious and understanding, there will always be those employees for whom no tailored solution can be found. To ensure your company's plans will work, make sure you reward and provide learning opportunities. Generation Ys are smart employees and they know a true development opportunity when they see it.

MacGillivrays has various employment opportunities - if you are interested in seeking employment, refer to the Careers section on our website at: www.macgillivrays.com.au to see what is available.

BY RACHEL CONNORS
Knowledge Manager
working remotely from Boston, USA



MACGILLIVRAYS PERSONAL INJURY TEAM DELIVERS A GREAT RESULT

MacGillivrays Litigation and Dispute Resolution Team (Personal Injuries) recently achieved a great result for one of their clients with a mediated settlement of over \$1 million. The client, X' had been injured in a motor vehicle accident in 2002 and as a result of the accident had suffered incomplete paraplegia.

Before the accident, X was outgoing, enjoyed sport, in particular surfing, and was at University studying to become a PE teacher.

Following the accident, X was transported by helicopter to the Princess Alexandra Hospital Spinal Injuries Unit and was released after six months, having undergone various operations and intensive rehabilitation.

Fiercely independent and with an extraordinarily positive outlook X is determined to live a normal life without having to be dependent upon others. A combination of determination and doggedness means X is now able to stand for short periods of time. This has given X increased independence because it allows X to prepare meals, place a wheelchair into a car and drive. (X's car has been modified and uses hand controls). In addition X has also achieved great success in the sporting arena and represented Australia in wheelchair basketball.

The mediation result was a great outcome for our client, who, with appropriate financial advice, can proceed to live a normal life, raise a family and have a prosperous future. Because of recent amendments to personal injuries law which now only allows for a small amount for pain and suffering the bulk of the compensation relates to ongoing and future medical costs, needs, and lost income, as well as the future costs of wheelchairs, house modifications and care and assistance.

BY GEOFF MANTEIT
Solicitor
Litigation & Dispute Resolution



If you have been recently injured in an accident or workplace and wish to discuss all of your legal options, please contact Greg Young, Partner or Geoff Manteit, Solicitor in the MacGillivrays Litigation & Dispute Resolution Team.

1 Actual client details have been removed due to confidentiality.

MACGILLIVRAYS PARTNER DELIVERS PAPER AT INTERNATIONAL CONFERENCE

Congratulations to Corporate & Business Services Partner Peter Dwyer who was recently invited to assist in the presentation of a conference paper at the "10th International Conference on Competition and Ownership in Land Passenger Transport". The conference was attended by Australian and international delegates.

Recognised as the premier international forum for the analysis and debate of competition and ownership issues in land passenger transport, this year's conference was held in Queensland. It was jointly hosted by the Institute of Transport and Logistics Studies (ITLS) and the University of Sydney.

Peter assisted in delivering the conference paper (written by Darryl Mellish and Ian McDonald from the *NSW Bus and Coach Association*) titled, "*A Journey from Adversary to Partnership - Bus Reform in NSW*". The paper reviewed and discussed the reforms affecting NSW bus operators, namely the introduction of performance-based contracts and the effect these contracts are having on the partnership between Bus operators and the NSW State Government, as well as the effect they are having on the general community - from inner Sydney to regional NSW.

An expert in Transport Law, Peter Dwyer has a specific interest in the public and private bus industries.

If you have any queries in relation to the bus industry or transportation issues in general, please contact Peter on (07) 3228 5226 or alternatively email him on peterd@macgillivrays.com.au



WHAT'S NEW?

Lawyers' compulsory CPD units - and how to get them by 31 March 2008!

The third of the "Tri-Series" programme being run by MacGillivrays for its lawyers, clients and in-house counsel - Ethics - will be held on **Tuesday 16 October 2007 from 4 - 6:30pm** with a light supper to follow.

Presenters will be:

- **John Britton**
Legal Services Commissioner
- **Malcolm Hinton**
General Counsel for the QLS

(Both of whom are accredited by the QLS to deliver this subject).

These sessions are being run by MacGillivrays and offered to clients and in-house counsel. (Lawyers in Queensland are required by the Queensland Law Society to complete the 6 compulsory Continuing Professional Development units of Risk Management, Trust Accounting and Ethics).

If you are interested in registering for this event, please go to our website www.macgillivrays.com.au and follow the prompts or alternatively, please email Melinda O'Brien, Marketing Assistant at events@macgillivrays.com.au

THE LIGHTER SIDE

Heaven's Automated Voicemail System

Be grateful God doesn't have voicemail. Imagine praying and hearing this:

"Thank you for calling Heaven. Please select from the following options:

- For requests - press 1;
- For thanksgiving - press 2;
- For complaints - press 3;
- For Confessions - press 4;
- For all other options - press 5;
- To hear these options again, press 6.

I am sorry, but all of our angels and saints are busy helping other sinners at the moment. However, your prayer is important to us and we will answer it in the order it was received. Please stay on the line.

If you would like to speak to:

- God the Father - press 1;
- Jesus the Son - press 2;
- The Holy Spirit - press 3;
- If you would like King David to sing a Psalm whilst holding - press 4;
- To find a loved one who has been assigned to heaven - press 5 then enter his/her Medicare card number followed by the # Hash key;
- For reservations into Heaven, please enter JOHN 3:16;
- For answers to nagging questions, about dinosaurs, the age of the earth, the number of angels that can stand on the head of a pin, life on other planets, and where Noah's Ark is, please wait until you arrive.

The office is now closed for the weekend, to observe a religious holiday. Bless you!"

PLEASE NOTE: This newsletter is not legal advice and our comments are of a general nature only. This document is not to be relied on as substitution for proper detailed advice. If you would like to be removed from, or added to our mailing or emailing list, contact Rachel Connors on (07) 3221 4550 or rachel@macgillivrays.com.au