

*I realized early on that success was tied to not giving up. If you simply didn't give up, you would outlast the people who came in on the bus with you.*

----- Harrison Ford

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## Your company and the law

If you are a director or secretary of a small company, you need to follow the requirements set out in the Corporations Act 2001.

### What does the law expect of you as a director?

As a director, you must:

- Be honest and careful at all times
- Know what your company is doing
- Make sure that your company can pay its debts
- See that your company keeps proper financial records
- Act in the company's best interests
- Fully up to date on what your company is doing
- Get outside professional advice when you need more details to make an informed decision
- Take an active part in directors' meetings

Can anyone be a director or secretary?

- Directors must be older than 18
- You must not act as a director or secretary (or manage a company) without court consent if you:
  - Have been declared bankrupt, or
  - Have been convicted of various offences such as fraud or offences under company law, such as a breach of your duties as a director or insolvent trading

### What if your company can't pay its debts?

You must stop your company trading if it is unable to meet its existing debts. You must prevent the company from taking on a new debt if that would mean that it could not meet that debt and its existing debts. Your company is 'insolvent' if it can't pay its debts. You would be breaking the law if you let the company while insolvent.

### Company housekeeping – records and registers etc

The officers of every company must make sure that the company attends to keeping of financial records. As a director, the law makes you personally responsible for keeping proper company records.

The Constitution for most companies is drawn up prior to the registration of the company. The Constitution has the effect of a contract between:

- the company and each member;
- the company and each director;
- the company and the company secretary;
- a member and each other member.

A company must provide an up-to-date copy of the Constitution (s.139) to any member who requests it within 7 days (or within 7 days of the fee being paid if a fee up to the prescribed amount set out in the Corporations Regulations 2001 (the Regulations) [1.1.01], is charged).

It is not necessary to lodge the Constitution of a proprietary company (not being an unlimited company) with the application for registration but they must be kept with the company's records and made available if required.