



EVERSOL'S weekly law

Contributed by Ken Sorrenson

Sole directors beware

Many businesses now operate with a sole director. There can be good reasons for this in terms of administrative convenience and the sheltering of other family members from business risk but there are disadvantages as well that need to be planned for.

Single director status causes problems when, for whatever reason, the sole director is not available to supervise the business of the Company.

A recent Supreme Court decision highlighted this Issue. In the case, a sole director's company was seeking to avoid being placed into liquidation. The proceedings to liquidate were based upon the Company's failure to comply with a particular form of demand that may be issued under the Corporations Act. The Company argued that its failure should be excused due to the ill health of the sole director which resulted in him being not being well enough to be fully involved in company matters at the relevant time. The evidence in support of the Company's case was not particularly strong but the Judge stated very firmly that it was the sole director's responsibility in those circumstances to put in place contingency measures to ensure that the Company could continue to operate and fulfill its responsibilities. So what are the contingency measures available to a sole director?

Many company directors assume that their personal Powers of Attorney will suffice to enable the Company to continue to trade and meet its obligations. Unfortunately, that is not correct. A company director can not authorise another person to exercise powers as a director by giving a Power of Attorney in favour of that person.

The solution is for the sole director to appoint what is called an "alternate director". This is a person who is appointed to act in the place of the sole director for a particular period of time (eg, whilst the director may be overseas) or after the happening of a certain trigger event (eg the physical or mental incapacity of the sole director). The procedure to appoint an alternate director will ordinarily be set out in the Constitution of the relevant Company and the appointment will need to be notified to the Australian Securities and Investment Commission.

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