

The Company Record you Can’t Afford to Overlook

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It is easy to overlook, but every company is legally required to keep and maintain an interests register. This is a document that discloses certain benefits or conflicts of interest a director may have in relation to the company. The Companies Act 1993 says the register should be kept at the company’s registered office, alongside the other company records listed in section 189 of the Act.

This is more than a ‘nice to have’. Non-compliance is an offence for both the company and each director, and each is liable on conviction to a fine of up to $10,000.

What goes in the register?

The interests register should record:

- the details of any indemnity given, or insurance provided, for any director or employee of the company (or a related company);
- any payment, loan or guarantee the company provides for the benefit of a director;
- the details of any shares in the company that a director holds or sells;
- the name of any person to whom a director discloses company information, where the director is required or accustomed to act on that person’s directions when exercising the director’s powers and duties; and
- a director’s interest in a transaction or proposed transaction. If there is more than one director, the monetary value of the interest should also be disclosed. If the monetary value cannot be quantified, then the nature and extent of the interest should be outlined in the register.

When is a director ‘interested’ in a transaction?

A director is ‘interested’ in a transaction if any of the following applies to them. They:

- are directly involved in the transaction (for example, as a buyer or seller), or are likely to gain a significant financial benefit from it;
- have a significant financial stake in another party to the transaction;
- hold a role with another party (such as being its director or manager) that is likely to gain a significant financial benefit from the transaction. This does not apply if that other party is the company’s parent company, a company the company wholly owns, or another parent company that also wholly owns the company;
- are the parent, child, spouse, civil union partner or de facto partner of someone who is a party to the transaction, or who is likely to gain a significant financial benefit from it; or
- have any other direct or indirect significant interest in the transaction.

Reporting and access

The company’s annual report must include the particulars of any entries made in the interests register during the accounting period.

In the interests of transparency, the Companies Act 1993 states that both the directors and shareholders of a company are permitted to inspect the interests register. Failure to comply with this inspection request is also an offence for both the company and each director, and each is liable on conviction to a fine of up to $10,000.

What should you do?

If you are not sure whether your company has an interests register, or whether it is complete and up to date, now is a good time to check. Given the penalties for non-compliance, it is worth getting right. A simple review will tell you where you stand:

- confirm that your company has an interests register and that it is kept at the registered office with the company’s other records;
- check that it records the matters set out above, including any indemnities or insurance, payments, loans or guarantees for directors, and any dealings by directors in company shares;
- ask each director to confirm any interests they have in current or proposed transactions, and make sure these are entered in the register;
- check that the register’s entries for the accounting period are reflected in the annual report; and
- make sure someone is responsible for keeping the register up to date, so it can be provided promptly if someone asks to see it.

If the register is missing, incomplete or out of date, it is better to fix it now than to wait for a shareholder, auditor or buyer to raise it. If you have any questions or would like us to help you review your company’s records, don’t hesitate to get in touch.