

## **DIRECTORS' OBLIGATION TO QUESTION (further to ASIC v Centro)**

A new court decision which examined the duties of directors has potentially significant ramifications for directors of all companies large and small.

In the recent Centro case, Justice Middleton of the Federal Court found the directors to be "intelligent, experienced and conscientious", but that their uncritical reliance on management and auditors was a breach of their directors' duties.

The most significant part of the judgement deals with a director's duty to be familiar with the company's business and operations. The Court found that if there are facts that directors should know, it is immaterial if they actually know them. The Court said:

***"a director should acquire at least a rudimentary understanding of the business of the corporation and become familiar with the fundamentals of the business in which the corporation is engaged; a director should keep informed about the activities of the corporation; whilst not required to have a detailed awareness of day-to-day activities, a director should monitor the corporate affairs and policies; a director should maintain familiarity with the financial status of the corporation by a regular review and understanding of financial statements; a director, whilst not an auditor, should still have a questioning mind."***

Justice Middleton's judgment was concerned with directors of public companies having a higher expectation of skill and competence than directors of proprietary companies. However, the principles of the case apply equally to proprietary companies. As a director of a proprietary company, if you sign something you do not understand or rely on advice which you should have known was wrong, or did not question, then you may be liable, even if you acted honestly.

### **"What can you do?"**

As a director, you are responsible for the information your company does or does not provide to you. Relying on advisers to digest financial reports will provide no safe harbour if they contain information which you should have known was incorrect. As a director, you should:

1. take steps to raise your level of financial literacy;
2. be proactive in seeking information from the company; and
3. if you receive any report/advice that whitewashes the truth or simply makes you feel uncomfortable, seek professional advice.

Please call us toll-free on 1-800-773-477 if you have any queries.