

A new law is about to commence which, if triggered, will treat you as continuing to be a director of a company after you have resigned. That means continued exposure to all the laws that can make you personally liable for company debts. However, this can be avoided with the press of a button.

Directors can be made personally liable for company debts in a number of circumstances, including:

- Unpaid PAYG withholding, employees' superannuation and GST (via a Director Penalty Notice)
- Incurring a debt that will make the company insolvent
- Allowing the company to trade while insolvent

If you are a director of a company at the relevant time, you're on the hook for these and other exposures.

Date from which resignation effective

When you resign as a director of a company, a notice is required to be lodged with ASIC within 28 days. Usually, the company secretary (or the company's agent, such as Nexia) lodges the notice, which can only be done electronically (Form 484). Presently, if the notice is lodged late, there's a penalty, but you still cease to be a director from the date you resigned, which is stated in the notice. However, the *Corporations Act 2001* has been amended such that if the notice is lodged after the 28-day deadline, **your resignation takes effect only from the date the notice is lodged**. This applies from 18 February 2021. The late penalty still applies as usual.

Does it matter? Well, there have been instances of former directors falling foul of the above exposures who would have been in the clear had their resignation taken effect a day earlier.

Yes, it happens. And so, yes, it matters.

Where you run your own business, you would typically be a continuing director of your own company, managing its affairs on an ongoing basis. So, this issue is of practical significance mainly for independent or non-executive directors, or where there is greater separation between ownership and management.

Get the e-paperwork done

Imagine that you sign the short and simple, standard-worded director resignation letter, with effect from 1 March. If the ASIC form is lodged by 29 March, your resignation is effective from 1 March. However, if it were lodged on 30 March, your resignation is effective only from that date. As alluded to above, a lot can happen in one day, let alone 29 or more days.

Ensure your resignation letter is communicated to the company, and keep a copy. The form to notify ASIC is relatively simple. Hit the button, and it's done. If, for whatever reason, it seems the company isn't going to lodge the required form, you, the resigning director, can do it yourself. However, in that case it's a different form (Form 370), which can be lodged either electronically or by paper. You might have to do it by paper, so don't wait until the last minute.

What if it's late, and it matters...

If you find yourself in the unfortunate situation of the ASIC notice having been lodged late, and you're facing a real prospect of personal liability because of the timing mishap, you can apply to ASIC or the Court for your resignation to be effective from the earlier date. However, there are deadlines for applying, and there's a whole process you have to go through, which could be expensive and likely very stressful, and there's no guarantee of success. Better to just make sure the ASIC notice is lodged in time, whether by the company or you.