

HAS THE DIRECTOR LEFT THE ROOM?

Most club constitutions provide means by which a director or committee member resigns or vacates office which generally complement the Corporations Act (in the case of companies) or the Associations

Incorporation Reform Act ("the Act") (in the case of Incorporated Associations). Also, most constitutions provide that if a director/committee member misses a certain number (typically 3) of consecutive board/committee meetings without formal leave of the board/committee, then he ceases to be a director/committee member.

These types of provisions vary from club to club, but the provisions of the Model Rules in Schedule 4 of the Associations Incorporation Reform Regulations 2012 are used as an example.

"56. Vacation of office

- (1) A committee member may resign from the Committee by written notice addressed to the Committee;*
- (2) A person ceases to be a committee member if he or she:-*
 - (a) ceases to be a member of the Association; or*
 - (b) fails to attend 3 consecutive committee meetings (other than special or urgent committee meetings) without leave of absence under rule 67; or*
 - (c) otherwise ceases to be a committee member by operation of section 78 of the Act."*

"67. Leave of absence

- (1) The Committee may grant a committee member leave of absence from committee meetings for a period not exceeding 3 months.*
- (2) The Committee must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the committee member to seek the leave in advance."*

Section 78 of the Act provides for circumstances in which a committee member vacates or is removed from office.

Leave of Absence

Accordingly, board/committee members who anticipate being absent should seek the prior approval of the board/committee to a leave of absence in accordance with the terms of that organisation's constitution.

Director's Resignation

A board/committee member who gives written notice of his resignation to the board/committee in accordance with the organisation's constitution has effectively resigned. Sometimes the resignation will specify a date upon which the resignation is to take effect.

It is not open to the board/committee to "refuse to accept" the resignation. The resignation is the unilateral act of the board/committee member which should be distinguished from an "offer" to resign.

Member Resignation

A similar position occurs with members who have declared their dissatisfaction with service or facilities at the club and may grandly declare their resignation from membership by handing back their membership card at reception. Unfortunately, many club constitutions require that a member must resign by giving written notice. Accordingly, many clubs constitutions now provide for various means of resignation by a member including the handing back of their membership card. This is seen as a means of avoiding uncertainty and unpleasant exchanges in the future over a person's membership status.

Income Tax Latest News

Clubs will be aware that the former Labour Government announced in May 2011 that it would introduce an Unrelated Business Income Tax ("UBIT") as part of its "Better Targeting of Not for Profit Tax Concessions" program. [See Club Connect December 2012]

The UBIT, if introduced, may have had a significant impact on Clubs that were exempt from income tax (eg. sporting clubs, community service clubs and animal racing clubs). Whilst consultation with representatives of the clubs movement occurred there were few details released. It was believed that the UBIT would have the effect on exempt clubs of imposing income tax on gaming or bistro profits that were not applied to the club's purpose (eg sport).

However, on 14 December, 2013, the Assistant Treasurer (Senator Arthur Sinodinos AO) announced:-

"The Government will also not proceed with the measure to "better target" not-for-profit tax concessions at this stage, but will explore simpler alternatives to address the risks to revenue".

This welcome announcement clarifies the position for those many affected Clubs.

However, there remains a considerable concern for clubs in amendments to the special conditions for income tax exemption for clubs, especially sporting, community service and animal racing clubs. The former Labour Government made amendments to the special conditions on 28 June, 2013 without any consultation with clubs or their representatives.

Those special conditions now require that clubs must:-

- (a) “comply with all the substantive requirements in its governing rules”; and
- (b) “apply its income and assets solely for the purpose for which the club is formed”.

Readers may recall the Cronulla Case (Full Federal Court) made it clear that a club could have a secondary and independent purpose (eg social activities) and not be disqualified from income tax exemption as long as it still held its main purpose (eg sport).

The new special conditions represent a fundamental shift from the previous position. It is understood that the ATO is preparing a draft public ruling to clarify the position for clubs.

However, in our opinion, nothing less than an amendment to the special conditions to return to the previous position offers clubs reasonable certainty.

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