



INDIVIDUAL

Letter of appointment¹

Several requirements exist before a person is appointed as a director of a company. These are covered in the AICD Director Tool *Appointing a new director*. A major requirement contained in s 201D of the *Corporations Act 2001 (Cth)* (the *Corporations Act*) is the need for a signed consent to act as a director.

A company may send to a proposed new director the *Consent to Act as a Director* form together with an *Offer of Appointment* letter. Alternatively, the *Consent to Act as a Director* form can be sent first and the *Letter of Appointment* sent after the signed consent form is received. Under either option it is essential that the signed *Offer/Letter of Appointment* and the *Consent to Act as a Director* form be received by the company.

For listed entities, the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*² (ASX Principles) Recommendation 1.3 states: "A listed entity should have a written agreement with each director and senior executive setting out the terms of their appointment".



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For other companies, it is good practice rather than an ASX Principles' recommendation. It is also an opportunity to provide the new director with more information such as details of the duties and responsibilities associated with the role and available resources. The letter is usually signed by the chair of the board.

It is important to ensure that the contents of the letter of appointment do not conflict with the *Corporations Act*, the company's constitution or, for listed companies, the ASX Listing Rules.

The contents should be tailored to the appointment and reflect the size, type and complexity of the company.

In addition, the contents might include cross-references to the company's securities trading policy and any other relevant policies and procedures, details of the induction process, access to information protocols, indemnity and insurance arrangements and an organisational chart.

1. The following material relates to appointment of non-executive directors (see AICD Director Tool *Types of directors*). Executive directors are normally provided an employment service contract which, among other matters, deals with the person's appointment as an executive director.
2. ASX Corporate Governance Council, 2019, *Corporate Governance Principles and Recommendations*, 4th edition, February, <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>, (accessed 8 May 2019).

What should the letter of appointment contain?

The ASX Recommendation 1.3 provides a useful starting guide for any company in terms of what should be included in a letter of appointment, namely:

- *the requirement to disclose the director's interests and any matters which could affect the director's independence;*
- *the requirement to comply with key corporate policies, including the entity's code of conduct, its anti-bribery and corruption policy and its trading policy;*
- *the requirement to notify the entity of, or to seek the entity's approval before accepting, any new role that could impact upon the time commitment expected of the director or give rise to a conflict of interest;*
- *the entity's policy on when directors may seek independent professional advice at the expense of the entity (which generally should be whenever directors, especially non- executive directors, judge such advice necessary for them to discharge their responsibilities as directors);*
- *indemnity and insurance arrangements;*
- *ongoing rights of access to corporate information; and*
- *ongoing confidentiality obligations.*³

Other details commonly included in a *Letter of Appointment* are:

- reference to sections of the constitution dealing with the appointment, duties and dismissal of directors;
- the term of appointment;
- the duties and roles of directors;
- details about any code of conduct or similar for directors/employees;
- the time commitment envisaged, including any expectations regarding involvement with committee work and any other special duties attaching to the position;
- the meeting schedule for the board and its committees as well as any other events which directors are expected to attend;
- remuneration, including superannuation entitlements and expense reimbursement;
- details on how to access the company's policies, procedures and other corporate information; and
- if not previously obtained, agreement by the proposed director for checks by the company required to determine that they are a fit and proper person to take the role of director; for example, agreement for the company to undertake police checks.

3. Ibid, p 8.

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