



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 13

# ACN, ARBN and company names

**Chapter 3 — Internal administration**

**Chapter 4 — Various corporations**

*Issued 5/4/1994*

*Updated 7/8/1995*

*From 5 July 2007, this document may be referred to as Regulatory Guide 13 (RG 13) or Practice Note 47 (PN 47). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 13.1) or their practice note number (e.g. PN 47.1).*

---

### Contents

<b>Purpose.....</b>	<b>2</b>
<b>Bodies identified by numbers .....</b>	<b>2</b>
<b>Use of ACN .....</b>	<b>3</b>
<b>Public documents .....</b>	<b>4</b>
<b>Specific classes of documents .....</b>	<b>7</b>
<b>The company's document .....</b>	<b>10</b>
<b>Eligible negotiable instruments .....</b>	<b>12</b>
<b>Seals.....</b>	<b>13</b>
<b>How the name and ACN should be displayed .....</b>	<b>13</b>
<b>Australian Registered Body Number .....</b>	<b>16</b>
<b>Exemptions from ACN and ARBN.....</b>	<b>20</b>

## Purpose

---

RG 13.1 This guide supersedes Practice Note 3 (see 1994 *ASC Digest* at SPS 1). It reflects the changes arising out of the passage of the *Corporations Legislation Amendment Act (No 2) 1991* (Cth). The changes relate to abbreviations used by companies and bodies in official documents, the definition of public documents and exemptions from the ACN requirements.

RG 13.2 There are different requirements for companies, foreign companies and other registered bodies. See RG 13.10–RG 13.77 for the requirements relating to companies and RG 13.78–RG 13.90 for the requirements relating to foreign companies and registered bodies.

RG 13.3 References to sections, subsections and paragraphs in this guide are references to the Corporations Law (Law) unless otherwise specified.

## Bodies identified by numbers

---

### Companies

RG 13.4 Every company in Australia has been issued with a unique, nine-digit number, an Australian Company Number (ACN). The company's full name and this number must be included on a range of documents (s219).

RG 13.5 The policy of the company name provisions is:

“to ensure that people dealing with companies know both that they are dealing with a limited company and know the identity of the particular limited company with which they are dealing”.

This passage is from *Jenice Ltd v Dan* [1993] BCLC 1349 at 1352, from counsel's submission on the company name provisions of the *Companies Act 1985* of the United Kingdom, which resemble those of the Law, except in not providing for company numbers. It was accepted by the Court.

### State of incorporation

RG 13.6 The ACN is a key part of a simplified, national system of company registration, which allows companies to conduct business in a state other than their home state without having to register in the

other state. Because of the ACN, it is no longer necessary for company documents to show the state or territory of the company's incorporation. (However, a company must set out its jurisdiction of incorporation in share scrip, wherever it is issued: s1087(1)(b)(i).)

## **Foreign companies and registered Australian bodies**

RG 13.7 Entities other than companies incorporated under the Law are registered nationally, and each is given an Australian Registered Body Number (ARBN). (This includes foreign companies and Australian entities incorporated under other laws.)

RG 13.8 Each of these bodies must (under s362) set out in its business documents:

- (a) its name;
- (b) its ARBN;
- (c) its place of incorporation or formation; and
- (d) that the liability of members is limited (if appropriate).

RG 13.9 If the body is formed or incorporated in Australia, these requirements do not apply to business documents signed, published or issued in the state or territory in which it is formed or incorporated.

## **Use of ACN**

---

RG 13.10 A company's full name and the words "Australian Company Number" (or an abbreviation, such as "ACN" or "A.C.N.") and the company's ACN must appear legibly in certain documents. If the ACN is part of the company's name, as allowed by s 372, the ACN does not have to be repeated. The ACN must appear immediately after the first mention of the company's full name. For example:

"Anonymous Pty Ltd ACN 111 111 111"

"Anonymous Pty Ltd A.C.N. 111 111 111"

"Anonymous Pty Ltd Australian Company Number 111 111 111"

"Anonymous Pty Ltd Aust Co No 111 111 111"

"Anonymous Proprietary Limited ACN 111 111 111".

See RG 13.63–RG 13.77 for more information on how to set out the ACN.

RG 13.11 The documents which must include this information are:

- (a) every public document of the company that is signed, issued or published (s219(2)(a) and 219(3)(a));
- (b) every eligible negotiable instrument of the company that is signed or issued (s219(2)(b) and 219(3)(b)); and
- (c) the company’s common seal and other seals (s219(1)).

RG 13.12 The ASC also recommends that a company consider using the ACN wherever the company’s full name is set out.

RG 13.13 See RG 13.14–RG 13.53 for the requirements for public documents, RG 13.54–RG 13.59 for the requirements for eligible negotiable instruments and RG 13.60–RG 13.62 for the requirements for seals. See RG 13.91–RG 13.99 for exemptions and exceptions and the consequences of non-compliance.

## Public documents

---

RG 13.14 A company’s full name and ACN should appear on all of its “public documents” and “eligible negotiable instruments” that are signed or issued (see s88A(1) of the Law and RG 13.11). A “public document”, in relation to a body corporate, is now defined by s88A(1)<sup>1</sup> as:

“(a) an instrument of, or purporting to be signed, issued or published<sup>2</sup> by or on behalf of, the body that:

- (i) when signed, issued or published, is intended to be lodged [with the ASC: see ‘lodge’ in s9] or is required by or under this Law or the ASC Law to be lodged; or

---

<sup>1</sup> This replaces the definition of “public document” which was previously in s9; s88A(1)(c) corresponds to the definition previously in s9, with the omission of “publications” which are now public documents only if they fall within one of the other categories set out in the section.

<sup>2</sup> By s9 of the Law, “publish” includes “issue”, which includes “circulate, distribute and disseminate”.

(ii) is signed, issued or published under or for the purposes of this Law, the ASC Law or any other Australian law; or

“(b) an instrument of, or purporting to be signed or issued by or on behalf of, the body that is signed or issued in the course of, or for the purposes of, a particular transaction or dealing; or

“(c) without limiting paragraph (a) or (b), a business letter, statement of account, invoice, receipt, order for goods, order for services or official notice of, or purporting to be signed or issued by or on behalf of, the body.”

See also RG 13.91–RG 13.96 for exemptions.

## Electronic documents

RG 13.15 The definition of “document” includes documents in electronic and other forms which are not directly legible (s9). However, it is not an element of the definition of a public document that it be a document in that extended sense.

RG 13.16 The ASC believes that “public documents” only means documents in writing. This is because of the items included in the definition of public document and the requirement in s219 to “set out” the name “on” every public document and to “set out” the ACN after the name where it first appears “in legible characters”.

RG 13.17 The full name and ACN do not need to be included in documents in electronic form or other forms that are not directly legible (see also RG 13.33–RG 13.38).

## Documents affected

RG 13.18 A document that falls into one of the categories set out in RG 13.11 must comply with the company name and ACN requirements (s219), even if it also falls within another category not on the list (for instance, an invoice might double as a packing slip). It must also comply even if another document is issued which also falls within that category.

RG 13.19 Whether any particular document is a “business letter, statement of account, invoice, receipt, order for goods, order for services or official notice” is a question of fact. The company should obtain independent legal advice if it is in doubt. However, as a guide, in the ASC’s view:

- (a) a statement of account includes any written communication issued by the company to the effect that it owes money to a person or that a person owes money to it, including a net or nil balance after offsetting debts or partial payment, whether or not it includes a demand for payment or promise to pay, but does not include a promissory note;
- (b) an invoice is an itemised list of goods included in a shipment and their prices, whether or not it also includes additional charges;
- (c) a receipt is the company's written acknowledgment of payment (some receipts do not have to set out the ACN — see RG 13.93);
- (d) an order is an offer made by the company to contract for goods or services; and
- (e) official notices include:
  - (i) instruments signed, issued or published under or for the purposes of the Law, including documents to which s88A(1)(a)(i) applies because they are required or intended to be lodged with the ASC;
  - (ii) instruments signed, issued or published by or on behalf of a company, under or for the purposes of any other Australian law, that is, Commonwealth, territory and state legislation and common law. This includes: tax returns; group certificates; court documents; memorials lodged under deeds registration legislation; registrable instruments affecting Torrens title; and even a supplier company's disclosure notices issued to the public in respect of defective goods, as required by the *Trade Practices Act 1974* (Cth); and
  - (iii) instruments required by the company's constituent documents or for government purposes,

whether they are issued to one or more individuals, displayed in public, published in the Gazette or a newspaper or lodged with the ASC or another authority.

### **Instrument for a particular dealing**

RG 13.20 Paragraph 88A(1)(b) created a new category of public document: “an instrument of, or purporting to be issued or signed by or on behalf of a company in the course of, or for the purposes of, a particular transaction or dealing”: see RG 13.14.

RG 13.21 None of the words “instrument”, “transaction” and “dealing” are defined in the Law. “Instrument” has been read in various ways in different statutory contexts, but usually means a written document which is intended to have some legal effect. That is, it creates or affects legal or equitable rights or liabilities.

RG 13.22 The words “transaction” and “dealing” also have wide meaning. It appears that they cover any act entered into to create legal rights or obligations, even if the act is unilateral or the rights flowing from it are unenforceable.

## **Specific classes of documents**

---

### **Advertisements**

RG 13.23 An advertisement is only a “public document” if it falls within any of the categories of documents in the definition of public document in s88A. Three categories of public documents could be relevant:

- (a) an order for goods or services;
- (b) an official notice; or
- (c) an instrument executed or issued for the purposes of, or in the course of a particular transaction or dealing.

### ***Order for goods or services***

RG 13.24 Whether an advertisement is an order for goods or services depends on the contents of the advertisement. It is unusual for an advertisement to be an order for goods or services. This is because s219 applies only to the company’s order or an order signed, issued or published on behalf of the company (that is, where the company *orders* goods or services, not where the company *receives an order* for its goods or services).

### ***Official notice***

RG 13.25 As a general rule, an advertisement is not an official notice unless it is required to be published by the company’s constituent documents, by or under statute or for government purposes.

RG 13.26 The clearest examples of advertisements which are official notices are advertisements required under the Law (such as a notice advertising a proposed buy-back under s206LA(2)).

RG 13.27 An advertisement is not an official notice only because its content is regulated. For instance, although the content of cigarette advertisements is regulated, there is no requirement to publish such an advertisement. Accordingly, the ASC considers that a cigarette advertisement is not an official notice because of its content.

RG 13.28 However, if a company is required by law to publish an advertisement, the fact that the legislation does not require it to include its name in the advertisement does not preclude s219 from applying. In other words, if the advertisement is an official notice of the company, s219 requires both the company's name and its ACN to be set out in it.

### ***Instrument for a transaction or dealing***

RG 13.29 A document might be issued for the purposes of a particular transaction either because the document was intended to initiate the transaction or because it was intended to be used to carry the transaction forward after it began. An advertisement is an instrument issued for the purposes of a particular dealing if the advertisement constitutes an offer in terms of contract law. It might not be such an instrument, if it were a mere invitation to treat.

RG 13.30 Although advertisements are not usually offers, it is possible for an advertisement to be an offer, depending on its nature and terms: *Carlill v Carbolic Smoke Ball Co* [1892] 1 QB 256. If an advertisement does constitute an offer, then the advertisement is an instrument within the meaning of s88A(1)(b). It would then have to comply with the ACN requirements in s 219.

RG 13.31 This also applies to:

- (a) circulars to clients;
- (b) price lists;
- (c) catalogues;
- (d) advertising leaflets; and
- (e) brochures giving particulars of merchandise or services.

RG 13.32 However, a brochure with an order form attached which is intended to facilitate particular transactions would probably be caught by s88A(1)(b).

## Electronic transmissions

RG 13.33 Many transactions are now effected by electronic data interchange (EDI), that is, transmission of various standard form electronic documents from one terminal to another. They are in the form of structured or encoded data in accordance with agreed message standards, and the information they contain is not committed to paper.

RG 13.34 Except for the fact that they are not committed to paper, these transmissions have most of the characteristics of an instrument to which s88A(1)(b) applies. They affect legal relations, relate to specific transactions and may be, or purport to be, issued by or on behalf of companies.

RG 13.35 The company name and ACN provisions are primarily designed to deal with documents written on paper or similar materials. (See the comments in RG 13.15–RG 13.17 on the definition of a document.) They are so little adapted to electronic transmissions that they cannot be fully complied with in transactions using electronic transmission.

RG 13.36 Electronic transmissions are “documents” in the extended sense defined in s9, since they can be translated into legible written form. They are not, however, sent in legible form. (While an electronic transmission can be displayed on a terminal or printed out, these legible manifestations are not issued or published by or on behalf of the company issuing or publishing the message — they are either retained by the sender or generated by the recipient.) For this reason the ASC is not persuaded that Parliament intended to apply the company name and ACN provisions to EDI transmissions as public documents.

RG 13.37 The arrangements governing EDI transmissions are designed to ensure that people receiving EDI messages know the identity of the company with which they are dealing, that is, they are directed to achieving the same outcomes as are the company name and ACN provisions.

RG 13.38 Accordingly, the ASC will not enforce the company name and ACN provisions in relation to EDI communications unless it finds that the means used in those systems to identify participants to one another are inadequate.

## Credit and other card vouchers

RG 13.39 The voucher generated by the use of a credit card appears to be an “instrument signed or issued in the course of, or for the purposes of, a particular dealing”. On the one hand, it is a document of the card-holder’s credit provider. It records the provision of credit on behalf of the card-holder to the retailer, according to a contract between the credit provider and the card-holder. On the other hand, it is a document of the merchant’s collecting bank, recording the method of payment for that particular transaction.

RG 13.40 This also applies to the slips issued by automatic teller machines and EFTPOS terminals in the course of deposit, withdrawal and payment transactions. Under shared access arrangements, a slip may be issued by one institution’s machine on behalf of that institution or any of a number of other institutions (guests). It would appear to be the document of the guest institution, if any, not of the host.

RG 13.41 At present it is impractical for companies’ full names and ACNs to be included on credit cards and embossing plates so that it can in turn appear on the vouchers.<sup>3</sup> This is due to limitations, some of them physical and others due to international standards which govern the format of credit cards.

RG 13.42 At present, there are corresponding problems with electronically generated vouchers. Identifying the card issuers and the merchants’ receiving banks, however, is not usually difficult.

RG 13.43 Accordingly, for the time being the ASC does not intend to enforce the company name and ACN provisions in relation to vouchers produced by the use of credit and other cards.

## The company’s document

---

RG 13.44 The company name and ACN requirements do not apply to a document unless it is, or purports to be, the company’s document. This can come about in several ways.

---

<sup>3</sup> It is not suggested that the cards and embossing plates are themselves public documents.

## **The company's document**

RG 13.45 The company name and ACN requirements apply to a public document if it is the company's document (that is, if it is a document of a specified kind "of the company", such as its receipt). This part of the definition simply directs attention to whether a receipt, for instance, is a valid receipt binding the company. Accounts, invoices, receipts and orders are the company's accounts, invoices, receipts and orders if they bind the company. Official notices are the company's notices if they bind it or the company can rely on them.

### **"Signed etc by the company or on its behalf"**

RG 13.46 The company name and ACN requirements also apply to a document signed, or issued or (in the case of a document published for the purposes of an Australian law or required or intended to be lodged with the ASC) published by or on behalf of the company.

RG 13.47 "Signed" refers to any signature, sealing or printed signature on a public document which binds the company.

RG 13.48 A document is signed, issued or published on behalf of a company if it is signed, issued or published by its responsible officer, organ or agent.

### **Purporting to be signed etc by the company or on its behalf**

RG 13.49 The company name and ACN requirements also apply to a document which purports to be signed, issued or published by or on behalf of the company. That is, they apply even though a document is signed, issued or published without the company's authority.

RG 13.50 A document "purports to be signed, issued or published on behalf of the company" if it purports to be signed, issued or published by the company's responsible officer, organ or agent.

RG 13.51 Whether a document has been (or purports to have been) signed, issued or published on behalf of the company may not be apparent by looking at the document. It may have to be determined from surrounding circumstances.

RG 13.52 Documents are published on behalf of a company whenever they are issued or circulated in its name — no execution or agency in the strict sense is necessary.

RG 13.53 An instrument or other document can be the document of, or signed, issued or published on behalf of, more than one body. This is normally true of contracts and may also be true of many other types of documents.

## **Eligible negotiable instruments**

---

RG 13.54 A company's full name must appear on each "eligible negotiable instrument" of the company (see s12(b)). The company's ACN must appear immediately after the company's name, the first time it is set out in full (s219(3)(b)).

RG 13.55 An eligible negotiable instrument of a company is defined in s9 as:

- (a) a bill of exchange, promissory note, cheque or other negotiable instrument;
- (b) an endorsement on, or order in, such a negotiable instrument; or
- (c) a letter of credit,

of, or purporting to be issued or signed by or on behalf of, the company.

RG 13.56 A bill of exchange, cheque or payment order is an eligible negotiable instrument of a company if the company is named in it as drawer. It is not an eligible negotiable instrument if the company is named in it only as a drawee or issuer.

RG 13.57 A promissory note or an endorsement is a company's eligible negotiable instrument if the company is named in it as promisor or endorser.

## **Signatures**

RG 13.58 An instrument is an eligible negotiable instrument of a company if it directly binds the company. Any signature or printed signature on an instrument which has this effect binds the company. An instrument purports to be issued or signed by or on behalf of the company if it appears to bind the company, even if it were signed or issued without the company's authority.

RG 13.59 A person may sign, endorse or issue a negotiable instrument on behalf of a company, foreign company or registrable Australian body. A person may also authorise a negotiable instrument to be signed, endorsed or issued. If the company's or body's name or number is not included in the instrument, the person may become, in effect, guarantor of the company's or body's liability for the negotiable instrument.<sup>4</sup> (In addition, the person is liable for penalties in s1311 and Sch 3.)

## Seals

---

RG 13.60 A company must set out its name and ACN in its common seal (s219(1)). The seal under which scrip is issued must be a duplicate of the common seal, unless the words "Share Seal" or "Certificate Seal" are added (s1088). Subsection 182(10) requires an official seal to be a duplicate of the common seal, with "Official Seal" added. These seals must also set out the company's ACN. The scrip must also state where the company was incorporated (s1087(2)(b)(i)).

RG 13.61 The ACN may be included as part of a company's common or other seal, by the same mechanical means that are used to generate the rest of the impression of the seal.

RG 13.62 There is no common law or statutory requirement that the words "Common Seal" appear on a common seal. To avoid confusion with share and official seals, however, the ASC suggests that it would be good practice to identify the common seal by name.

## How the name and ACN should be displayed

---

### Exact setting-out of name

RG 13.63 The requirement to set out the company's full name is interpreted strictly. The following have all been held not to comply:

- (a) the omission of "Limited" (*Penrose v Martyr* (1858) 120 ER 595);

---

<sup>4</sup> This means that the position which already existed in relation to the body's name under *the Companies Act 1981* and Codes, the *Bills of Exchange Act 1909* (Cth) and the *Cheques and Payment Orders Act 1986* (Cth) is extended to the ACN requirement.

- (b) a wrong ordering of the words making up the company's name (*Atkin & Co v Wardle* (1889) 58 LJQB 377);
- (c) the omission of a "&" (*Hendon v Alderman* (1973) 117 Sol Jo 631); and
- (d) abbreviating "Michael" to "M." (*Durham Fancy Goods Ltd v Michael Jackson (Fancy Goods) Ltd* [1968] 2 All ER 987).

The name need not be absolutely correct, however. Obvious spelling mistakes and other minor departures with no tendency to confuse or mislead may be held not to offend (*Jenice Ltd v Dan* [1993] BCLC 1349).

## Abbreviations

RG 13.64 Some abbreviations are specifically allowed (s219(4)). The following abbreviations of "Australian Company Number" can be used: "Aust." can be used instead of "Australian", "Co." instead of "Company", "No." instead of "Number" and "A.C.N." instead of "Australian Company Number". Although they are expressed as alternatives, two or more of these abbreviations may be used together (see s371).

RG 13.65 In addition, words in the name of a company can be abbreviated (s371). All of the abbreviations in s219(4) can be used: see RG 13.64. In addition, "Coy." instead of "Company", "Pty." instead of "Proprietary", "Ltd." instead of "Limited", "&" instead of "and" and "N.L." instead of "No Liability". (The long forms may also be used in place of the short forms.)

RG 13.66 All of these abbreviations can be used without stops (s99A). For instance, "ACN" may be used instead of "A.C.N."

RG 13.67 Short forms not listed should be avoided. For instance, "P/L" instead of "Pty. Ltd." etc is not mentioned in the Law, and the courts might not find it acceptable.

## Companies trading under business names

RG 13.67A Sections 219 or 362 must be complied with even if a registered business name, which is owned by the company, appears on the same document.

[*Historical note:* The heading, "Companies trading under business names" and RG 13.67A inserted 7/8/1995.]

## Arrangement

RG 13.68 A company's ACN must follow its name in its common or other seals (s219(1)). The ACN must immediately follow the first mention of the company's name on a public document or an eligible negotiable instrument.

RG 13.69 The ASC does not understand either of these expressions to mean the ACN must appear on a continuation of the line occupied by the name (be it straight or circular) or immediately the name: the test is whether a person who starts with the name can identify the number as being in some way linked with the name. For example, in a common seal it would be sufficient to put the company's name on the circumference of the seal and the ACN in the middle.

RG 13.70 The ACN on a seal may be generated by the same process as the rest of the impression of the seal and as part of the design of the seal. There does not need to be a border around the design and the number.

## Type size

RG 13.71 There is no definition of what are legible characters for this purpose. The characters must be legible to the ordinary reader. The ASC will accept that this part of the requirement is satisfied if the type used is 8 point Times Roman or better.

## First occurrence

RG 13.72 A company's name must be set out in full in every document in which it must appear and the ACN must follow the company's name the first time it appears in full. There is no reason why the company's name may not be used in an abbreviated form elsewhere in the document or appear without the ACN, even before it is first used in full.

RG 13.73 For example, it would be acceptable if Blanco Whitegoods Ltd had "BLANCO" printed at the top of its letterhead and "Blanco Whitegoods Ltd. ACN 123 456 789" at the foot. Strictly, because the ACN must accompany the name when it *first* appears, a letter beginning "On behalf of Blanco Whitegoods Ltd. ..." would have to continue "... ACN 123 456 789". The ASC will, however, regard the requirement as satisfied in relation to a letter, if the company's letterhead complies, without requiring it to be satisfied again in the text of the letter.

## Leading zeroes

RG 13.74 As allocated and used by the ASC, an ACN consists of nine digits. At present, the first digit is always a zero and the second and third digits are often zeroes. That is, “012 345 678” and “001 234 567” are typical ACNs.

RG 13.75 The ASC always uses all nine digits in three groups of three, separated by spaces, because that format makes it easier to detect when a digit has been omitted. For the same reason, the ASC would strongly prefer the ACN to be set out in the same format on all documents lodged with it. It recommends that companies always use this format, unless there are good reasons to use another format. The ASC is aware, however, that ACNs set out in this way on general purpose stationery have been mistaken for telephone numbers by members of the public.

RG 13.76 While the Law requires a company to use the number allocated to it, it does not mention the format of the number. A zero which occurs before any other digit does not affect the value of a natural number, whether the number is an ACN or relates, say, to an amount of money: \$001,000,000 is the same amount as \$1,000,000 and 12,345,678 is the same ACN as 012 345 678. All zeroes which occur after the first non-zero digit are essential, in either case.

RG 13.77 Accordingly, the ASC accepts that a company complies with the ACN requirement if (apart from the expression “ACN” or some equivalent) the numerical value of the company’s ACN is correctly expressed, notwithstanding that the ACN may have been given in a format which is not that used by the ASC.

## Australian Registered Body Number

---

RG 13.78 The numbers used for foreign companies and Australian entities other than companies are called Australian Registered Body Numbers. A body’s name and ARBN must be used in the same documents and set out in the same way as companies’ names and ACNs (s362), except for the following:

- (a) common or other seals do not have to bear the ARBN;
- (b) the permitted abbreviations are “Aust.,” “Regd.,” “No.” and “A.R.B.N.”. These may also be used without the full stops (s99A);
- (c) section 371 does not apply to the names of foreign companies and registrable Australian bodies. (Section 371 allows certain

abbreviations to be used in a company's full name — see RG 13.65.) However, s362(2)(c)(ii) and s369 imply that the use of “Ltd.” instead of “Limited” in their names is acceptable;

- (d) in public documents (but not eligible negotiable instruments):
  - (i) the name of the body's place of incorporation or formation must be set out; and
  - (ii) if the liability of members is limited and the last word of the body's name is neither “Limited” nor “Ltd.”, notice must be given of the fact that members' liability is limited (s362(2)).
- (e) the use of the body's name and ARBN and the notice as to limited liability are required on public documents and eligible negotiable instruments only if they are issued, signed or published in Australia outside the jurisdiction of the body's incorporation or formation (s362(1A) and 362(1)).

## Bodies covered

RG 13.79 Whether an entity is required to register under Pt 4.1 depends on where the entity is formed and where it carries on business. (If an entity is required to register, it would have to have an ARBN.)

RG 13.80 In each State and internal Territory, the requirement applies to:

- (a) every body corporate; and
- (b) every unincorporated body which may hold property through an officer and sue and be sued (see the definition of “foreign company” in s5 of the *Companies Act 1981* and Codes),

which carries on business in that State or internal Territory.

RG 13.81 However, it does not apply to:

- (a) a company incorporated under the Law or predecessor companies legislation of any State or internal Territory;
- (b) a body corporate incorporated in that particular State or Territory;  
or
- (c) an unincorporated body formed or having its head office or principal place of business in that particular State or Territory.

(See the definitions in s9 of “registrable body”, “registrable local body”, “registrable Australian body”, “foreign company”, “body corporate”, “incorporate” and s76.)

RG 13.82 An Australian body is not required to register just because it carries on business in its jurisdiction of incorporation or formation. But if it is required to register because it carries on business in another jurisdiction, it must register in its home jurisdiction as well (s102A and s 340).

RG 13.83 Examples of bodies which must register:

- (a) associations incorporated under Acts of the States and internal Territories, companies incorporated by private Acts of Parliament and Australian limited partnerships (each of which is required to use the ARBN on documents issued, signed or published outside the state or territory in which it is formed or incorporated);
- (b) British companies, US corporations and overseas limited partnerships (each of which is required to use the ARBN on documents issued, signed or published in every State and internal Territory); and
- (c) companies incorporated in Australia in jurisdictions where the Law is not in effect, such as Norfolk Island companies, and bodies incorporated in Australia under Commonwealth power, such as statutory corporations. These must use ARBNs in all public documents and eligible negotiable instruments signed, issued or published in all States and internal Territories.

RG 13.84 There are certain exclusions for corporations sole and public authorities (see the definition of a “registrable Australian body” in s9), Australian banks (s362(2)(b)) and building societies and credit unions regulated by the Financial Institutions Codes (Cth) (see s65 of those Codes).

## **Bodies which do not carry on business in the jurisdiction**

RG 13.85 On one reading, any body which wishes to issue, sign or publish public documents or issue or sign eligible negotiable instruments outside its jurisdiction of incorporation or formation must be registered (s362, in conjunction with s340 and s343). Some bodies which do not carry on business at all (for example, some charitable bodies) would need to register for this reason.

RG 13.86 ARBNs are only issued under s341 and 344. Neither s340 nor s343 requires a registrable Australian body or a foreign company to register, unless it carries on business in a jurisdiction other than its place of formation or in Australia. The ASC has the

power to remove a body from the register because it does not carry on business (s342 and 350). However, it will consider a body's need to be registered in order to comply with s362 when deciding whether to exercise this power.

## Where issued or published

RG 13.87 For a body formed or incorporated in a State or internal Territory, s362 applies only to a public document or eligible negotiable instrument which is signed, issued or published in any other State or internal Territory.

RG 13.88 For this purpose:

- (a) business letters, invoices, statements of account and orders ordinarily are issued (in the ordinary sense of the word) only in the place which they originate;
- (b) business letters, invoices, statements of account and orders ordinarily are not published or issued in the wider meaning which includes "circulate, distribute and disseminate" anywhere at all; and
- (c) official notices are issued both where they originate and wherever they are circulated, distributed or disseminated.

RG 13.89 The wider meaning of "issue" mentioned above encompasses many situations in which a relevant document could also be said to be published.

RG 13.90 Examples:

- (a) A company incorporated in Victoria with limited liability under a private Act sends a statement of account from Melbourne to a client in Hobart. The document is issued in Melbourne and is not published, circulated, distributed or disseminated anywhere. The company's name, ARBN, place of incorporation and limitation of liability need not be set out.
- (b) The company's branch manager at Broken Hill in New South Wales writes to a local furniture retailer to order desks. The desks are not available locally — the manager writes to Melbourne for them. In each case the letter or order is signed and issued in NSW, so must bear the company's name and ARBN and disclose the place of incorporation and limitation of liability.
- (c) Société Anonyme du Vin is incorporated in France with limited liability. Its Darwin office sends orders to wholesalers in the

Northern Territory and Queensland. Since the orders are signed within Australia, all of them must set out the Société's name and ARBN, the place of incorporation and the limitation of liability, wherever they are sent.

## **Exemptions from ACN and ARBN**

---

### **General**

RG 13.91 A company or other body's name and ACN or ARBN are not required to be set out on documents only because they are packaging or labelling for goods or containers for goods (s88A(2) and 88A(3)).

RG 13.92 A body's publications are no longer public documents of the body, unless they fall within one of the classes set out in s88A. This ensures that the body's name and ACN or ARBN need not be set out on books, business cards and "with compliments" slips the body puts out.

### **Machine-produced receipts**

RG 13.93 All "machine-produced receipts" that are electronically, mechanically or otherwise produced by a device and which set out information reproduced from or derived from information stored on that device are exempt from s219(3)(a) and 362(4)(a) (under s383B). This applies to receipts imprinted by cash register on plain paper, but not receipts on preprinted forms, which may include information additional to that derived from the cash register. While these receipts do not have to set out the ACN or ARBN, they do have to set out the company or other body's full name.

### **Transport documents**

RG 13.94 The ASC can grant relief from the requirement in s219(3) or 362(4) to include the ACN or ARBN, so far as it applies to transport documents only (s383C). It cannot exempt an issuer from the requirement to set out its name. "Transport documents" are defined in s383C to include a ticket, waybill or bill of lading used in connection with the transportation, by sea, land or air, of persons, goods or mail. Relief may be given on an individual or class basis, and may be granted subject to specified conditions (s383C(6)).

RG 13.95 The ASC may only give relief if it is satisfied that the exemption is necessary or desirable for the promotion of maintaining consistency in international practices relating to the form, content or use of transport documents (s383C(2)).

RG 13.96 The ASC has granted relief to airlines for passenger tickets and baggage checks, excess baggage tickets, agency debit memos, agency credit memos, credit charge forms, miscellaneous charges orders, stopover vouchers and air waybills. (See ASC Instruments.) It has also granted relief to shipping lines for bills of lading and sea waybills.

RG 13.97 If a company or body does not comply with s219 or 362, it commits an offence against the section. So does an individual who:

- (a) issues, signs or publishes a contravening document;
- (b) uses a contravening document;
- (c) uses a contravening seal;
- (d) authorises the issue, signing or publication of a contravening document; or
- (e) authorises the use of a contravening seal.

RG 13.98 Penalties are specified by s1311 and Sch 3. There are additional civil consequences in relation to eligible negotiable instruments — see RG 13.59.

RG 13.99 It does not appear that a document executed under seal is invalidated by failure to comply with s219. (See *Moreland Metal Co Ltd v Cowlshaw* (1919) 19 SR (NSW) 231, approved in *K&F Nurse Pty Ltd v AFG Insurances* (1974) 24 FLR 170 at 182 and *Re Macro Constructions Pty Ltd* (1992) 8 ACSR 719 at 724.) Companies should take their own legal advice on the question, however.