



Your obligations as a small business operator



ASIC

Australian Securities & Investments Commission

ASIC and small business

ASIC is an independent Commonwealth government agency that regulates businesses, financial markets and financial services industries in Australia

A key function of ASIC is to help businesses operate within the law. This will help ensure that businesses in Australia are managed and operate fairly and transparently. Another key function of ASIC is to educate businesses on what it means to operate within the law.

If you operate a small business as a registered company or under a registered business name, this brochure is for you. It explains ASIC's role and the laws you must meet, specifically:

- under the *Corporations Act 2001*, if you operate your business as a registered company, and
- under the *Business Names Registration Act 2011*, if you have a registered business name.

Operating your business as a registered company

Small businesses can be established and operate in Australia in various ways

Many small businesses choose to operate as registered companies. ASIC is responsible for registering companies and for ensuring that persons that manage or operate companies comply with the *Corporations Act 2001*.

When ASIC registers a company, it can conduct business throughout Australia, without needing to register in individual states and territories.

A registered company:

- is a separate legal entity distinct from its members (i.e. shareholders) and directors
- remains in existence until deregistered
- has the same powers as individuals
- is entitled to privileges (e.g. a corporate tax rate, limited liability)
- can hold property, enter into contracts, sue and be sued, and
- has money and assets that must be used for the company's purpose.



Company officers are responsible for managing companies and businesses

A registered company is required to have at least one director, and a company secretary unless it is a proprietary company

People who operate as directors and company secretaries are, by definition, officers of the company. This means that they are required to ensure that the company operates within the law.

Before someone can become a director or company secretary, they must meet certain conditions. Some of these are listed below:

- directors and company secretaries must be at least 18 years of age
- a proprietary company must have at least one director, but does not require a company secretary
- directors and company secretaries must ordinarily live in Australia, and
- directors may be liable for debts incurred if the company trades while insolvent.

Because directors and company secretaries make decisions that affect the business, these are positions of responsibility. The law says that a person is disqualified from managing a company if they:

- are an undischarged bankrupt
- have been convicted of dishonesty offences (e.g. theft or fraud), or
- have been disqualified by ASIC from managing a company.

It is a serious criminal offence to manage a company if you fall into one of these categories.



Your obligations as an officer of a registered company

Obligation	Description
Have a registered office	A company must have a registered office in Australia and must inform ASIC of its location. The purpose of having a registered office is to have a place where communications can be sent to the company.
Have a principal place of business	If a company operates from a location that is different from the registered office, ASIC must be informed of the location.
Disclose personal details of directors and secretaries	A company must inform ASIC of the name, date of birth and current residential address of directors and company secretaries. A post office box cannot be used as the registered office, principal place of business, or for the personal contact details of company officers.
Keep financial records	Company officers must keep up-to-date financial records that correctly record and explain transactions and explain the company's financial position and performance. While small proprietary companies are not required to lodge financial reports with ASIC, they are required to keep records.
Pay relevant fees to ASIC	ASIC imposes fees when registering a company and lodging certain documents. We may also impose late lodgement fees.
Notify ASIC of changes	A company must notify ASIC if certain changes occur, with the most common being changes of: <ul style="list-style-type: none">• registered office (within 28 days)• principal place of business (within 28 days)• personal details of directors and company secretaries (within 28 days)• company share issues (within 28 days), and• the location of the company's share register (within 7 days).

What happens if you don't comply with your obligations?

We may send a compliance notice or a warning letter, obtain a court order, and/or take civil or criminal action.

Receive annual statements	When a company receives its annual statements, directors must ensure that the details on ASIC's registers are accurate and up-to-date. Importantly, directors must complete the solvency report.
Ensure the company is solvent and can pay its debts on time	A company is insolvent if it cannot pay its debts as and when they become payable. Common signs of insolvency include low operating profits or cash flow from the business, problems paying trade suppliers and other creditors on time, trade suppliers refusing to extend further credit to the company, problems with meeting loan repayments on time or difficulty in keeping within overdraft limits, and legal action taken, or threatened, by trade suppliers or other creditors over money owed to them.
Act in the company's best interests	You must act in the company's best interests even if this may not be in your own interests, and even though you may have set up the company for personal or taxation reasons.
Use information appropriately	You must use any information you get through your position properly and in the best interests of the company. Using that information to gain, directly or indirectly, an advantage for yourself or for any other person, or to harm the company, may be a crime or may expose you to other claims. This information need not be confidential. If you use it the wrong way or dishonestly, it may still be a crime.
Do not illegally 'phoenix' assets of a company	<p>This involves the intentional transfer of assets to a new company without paying the true value for those assets. The directors leave the debts with the old company, and the new company often has the same directors and is involved in the same industry as the old company. By engaging in this illegal practice, the directors avoid paying debts that are owed to creditors, employees and statutory bodies (i.e. ATO).</p> <p>Illegal phoenix activity is a serious crime and may result in directors being imprisoned.</p>



Registering your business name

ASIC is responsible for registering, renewing and administering business names throughout Australia.

The National Business Names Register, introduced in May 2012, replaces eight state and territory registry services.

All of the existing 1.6 million registered business names that were previously registered in states and territories have been transferred to the new national register.

Generally, you must register a business name on our Business Names Register if you are conducting a business or trade within Australia and you are not trading under your name.

You do not need to register a business name if you are:

- an individual and your business name is your name (your first name and surname)
- a registered company and the business name is the company's name, or
- a partnership and the business name consists of all of the partners' names.

To register, update or search business name details, go to ASIC Connect at www.asic.gov.au.



For more information

Visit our website, www.asic.gov.au, for more information on:

Your obligations to operate a business as a registered company

- Information Sheet 7 *Are your company details up to date?*
- Information Sheet 12 *ASIC search information and fees*
- Information Sheet 14 *Bankruptcy and personal insolvency agreements*
- Information Sheet 25 *Voluntarily deregistering a company*
- Information Sheet 26 *Dealing with businesses and companies: How to avoid being swindled*
- Information Sheet 30 *Fees for commonly lodged documents*
- Information Sheet 42 *Insolvency: A guide for directors*
- Information Sheet 47 *Members of a company*
- Information Sheet 49 *Minimum officeholders*
- Information Sheet 61 *How to register a company*
- Information Sheet 76 *What books and records should my company keep?*
- Information Sheet 79 *Your company and the law*
- Information Sheet 151 *ASIC's approach to enforcement*

Registering your business name

- Regulatory Guide 235 *Registering your business name*
- Our booklet *National Business Names Register: ASIC Connect - Making it easier to do business.*



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Disclaimer

Please note that this is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

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