



ASIC

Australian Securities & Investments Commission

inFocus

Volume 15 - Issue 2
November 2006

Better Regulation

ASIC is committed to better regulation.

We regulate a broad and complex range of markets, corporations, products and services. As part of our commitment to better regulation, we have identified six priorities.

1 Transparency You can see how we are organised, who makes decisions, how they are made and how our decisions tie into the role Parliament requires ASIC to play.

2 Accessibility You can find out what decisions we have made, understand our policy and approach, and contact the people in ASIC who can best deal with your issues.

3 Less duplication and overlap You can help us identify and reduce areas where our regulation duplicates or overlaps with other regulators.

4 Business impact We will better understand the impact of our regulation on the people and entities we regulate, and will use more reliable and relevant information in making decisions.

5 Streamlining and less paperwork You can deal with us more efficiently. We will reduce paperwork, make better use of

electronic communications, and improve and streamline our processes.

6 Engagement with stakeholders You and your representatives will be effectively and efficiently consulted, so that we fully understand your views when we make regulatory decisions.

As part of our Better Regulation initiatives intended to make our regulation more transparent, smoother and easier to work with we have published the following material. You can download it from our website at www.asic.gov.au.

- The *Better Regulation* booklet that summarises our Better Regulation priorities, what we have done to date and our plans for future work.
- Our *Service Charter* that sets out what you can expect when you deal with us, how long it will take to do things and what we ask of you to help us serve you better.
- A guide to how we work that explains what we do, how we approach issues, how we consult with stakeholders and how we are accountable.
- An ASIC organisational structure with key contacts.
- ASIC's Strategic Plan 2005-10.

Contents

Better Regulation	1
ASIC on the move in Melbourne	1
Compliance notices	2
Charges online	2
Representing your clients	2
ASIC invoice statements	3
Sample invoice statement	4
Charges	6
Business Advisory Committee update	7
SNAPSHOT	7
Corporate key reminder	8
Registered agent forums	8
System outages	8
Apologies	8

ASIC on the move in Melbourne

ASIC's Melbourne office has moved.

From 8 November 2006 we will be situated at:

Level 24
120 Collins Street Melbourne 3000

All other contact details remain the same.

The Melbourne Service Centre will be at:

Shop 1
120 Collins Street Melbourne 3000

INFORMING REGISTERED AGENTS

Compliance notices

We issue a number of different letters or forms to companies to assist or direct them to meet their legal obligations. One of these is a *Compliance notice — return of particulars* issued under s348A of the *Corporations Act 2001*.

When may we issue a Compliance notice?

If we suspect or believe that the details recorded for the company on our corporate register are incorrect or missing. The details we hold are shown on the company statement which forms part of the *Compliance notice*.

Where is a Compliance notice sent?

It is addressed to the officeholder and sent to the company's registered office address. If the company lists your address as their registered office, you will be receiving the notice.

To help your clients meet their legal obligations please ensure that the *Compliance notice* is referred to them so that they can respond by the due date.

The *Compliance notice* contains:

- a letter describing why we are sending the notice to the company and what

the company must do to meet its legal requirements

- a company statement setting out the details recorded for the company on our corporate register, and
- a Form 483 *Company compliance statement (response to return of particulars)*.

What needs to be done by a company that receives a Compliance notice?

The company officeholders need to:

1. Ensure that the company is compliant with all legal requirements.
2. Ensure that all the company's details are accurately reflected on our register by advising us of changes. This is done by completing and lodging a Form 484 *Change to company details*.
3. Respond to us within 28 days of the issue date of the notice, by completing and lodging the Form 483.
4. Pay any outstanding fees.

In November we will issue further *Compliance notices*, initially to companies that do not meet the officeholder requirements and also to companies for which we have incomplete or missing details on our corporate register.

Charges online

We have established a project to develop an electronic registration and payment process for company charges. We expect to implement on 1 July 2007.

The solution will be delivered within ASIC's existing electronic internet-based lodgement model, electronic payment mechanisms and with minimal law reform.

Proposal

The solution we are proposing is online lodgement by a separate **Charges** menu on the current Registered Agent portal.

- The menu will be available to registered agents who have nominated to lodge charges documents. Dual access levels will be introduced for charges documents, ie. access to enter data, or alternatively enter data & submit forms for specific users.
- Access will be supported by the ASIC Electronic Lodgement Protocol.
- Online lodgement would be via:
 - structured questions with inbuilt validation & edit checks
 - uploading of the documentation that created or varied the charge (eg scanned signed instruments) as attachments (PDF, TIF or RTF) and verified as copies of the originals by the lodger.
- Certificates, provisional notices and reminders of stamp duty obligations will be issued online to an inbox for collection.
- Electronic payment will be by direct debit overnight — up to a limit agreed between the registered agent and ASIC.

Reports will also be made available for available funds, current debt and days trading, as well as a lodgement history report for nominated date ranges.

Interested?

Please email charges.project@asic.gov.au and we will send you ongoing information about our progress.

Representing your clients

When a company appoints you as their registered agent, it means that you become our main contact for that company. As well as lodging documents on their behalf, you will also be sent documents for them.

All normal correspondence for that company is sent to your address. This includes their annual company statement and annual review fee invoice.

Communicating electronically

If you are registered to lodge electronically; either online or through EDGE, we will send this correspondence electronically — direct to your mailbox — whenever possible.

You need to work closely with the companies you represent to help ensure they meet their obligations.

ASIC invoice statements

ASIC invoice statements may include details of :

- annual review fees
- document lodgement fees
- late fees including:
 - late lodgement fees
 - late review fees, and
 - late payment fees.

Invoices will be sent to you as the company's registered agent.

If the invoice is not paid, a second request will be sent directly to the officeholder.

Allocation of payment

The account summary shows the opening balance, new charges and payments or credits received.

Payments are always allocated to the oldest debt first. For example: a document is lodged for a company together with the correct lodgement fee. If the company has an outstanding amount due, that payment will be credited against the existing, older debt. This may mean that the new lodgement is shown as partially or completely unpaid.

If a company account is in credit, the word 'CREDIT' will be shown against the account balance. You can request to have a credit refunded or transferred to another account.

Transaction details

Transaction details are listed on the invoice statement, they will explain what the fee is for.

Invoices with balances that are carried forward will not have details for the earlier transactions. The details can be confirmed by referring to previous invoices.

Agents who lodge electronically can access invoices from their mail box for up to 30 days after issue.

Payment of invoices

The payment slip details payment options available. If you are paying by cheque for more than one company, then you must include advice showing us what companies the payments are for so that we can allocate them to the correct accounts.

See our sample invoice on page 4 for details.

Using EFT as a payment option

Individual payments are to be made for each company using their own Unique Reference Number (URN).

You MUST include the URN in the Payment Reference/Description field when initiating the EFT from your financial institution.

To obtain the URN for your company, please do one of the following:

- Use the BPay reference from your invoice, ignoring the biller code.
- Email epaymentenquiries@asic.gov.au.
- Use the National Names Index and enter your company's ACN. Your company's unique reference number is shown beside the BPay logo. Ignore the biller code.

Your financial institution will need to allow you to include your URN (consisting of 13 digits) when making your payment.

Payments need to be made to ASIC's nominated bank account, details of which are available on our website; see www.asic.gov.au/payments. You should check with your financial institution for processing

deadlines to ensure your payments reach us on or before the due date. EFT payments made out of hours, on a weekend or public holiday, will not reach us until the next business day.

How to check if the invoice has been paid

In line with normal business practice we do not issue receipts for payment. If you wish to confirm that payment has been received, you can view your company account at any time through our online service or through EDGE. You can also contact your financial institution

EDGE

Through EDGE you can check for companies with outstanding amounts due by requesting a debtor report.

Individual company

Shows the debt details for a particular company that is linked to you. This report is requested by lodging an RA63. You need to supply a company name and ACN (one name/ACN only). The response is delivered as an RA64.

All companies

For all companies linked to you that have debt to ASIC. This report is requested by lodging an RA67. The response is delivered as an RA68.

Linked companies with zero debt balances will not appear on the reports.

Online at www.asic.gov.au/easylogde

If you use our online service you can check for all companies linked to you that have debt to ASIC. This report is requested by lodging an RA67.

How to check that forms have been received by ASIC

To confirm whether forms have been received by ASIC you can check our National Names Index. It shows a list of all documents lodged with ASIC by a company.

You can also use our Company Alert service to receive email notification whenever a form is lodged against a specific company.

Sample invoice statement

Enquiries 03 5177 3988
Issue date 25 Sep 06

ASiC
 Australian Securities & Investments Commission
 ABN 88 765 265 615

Invoice Statement

ACN 123 456 789
 ACCOUNT NO 22 123456789
 FOR SAMPLE CORPORATION

SAMPLE CORPORATION
 350 SMITH ST
 ANYTOWN VIC 3066

Account summary

Opening balance	\$100.00
New charges	\$547.00
Payments and credits	\$100.00 CR
Account balance	\$547.00
	\$335.00 Pay Now
	\$212.00 Pay by 25 Nov 06

Transaction details are listed on the next page(s).
 Amounts not subject to GST
 Treasurer's Determination (Exempt taxes, fees and charges)

Payment slip (See next page for payment options)

ACN	123 456 789
ACCOUNT NO	22 123456789
FOR	SAMPLE CORPORATION
Account balance	\$547.00
	\$335.00 Pay Now
	\$212.00 Pay by 25 Nov 06

Billier Code: 17301
 Ref: 22 123456789

Australia Post Bar Code
 9922 67592032 464646464

ASIC Bar Code
 2225555444777777 8888222

123 456 789 Page 1 of 2

Issue date

Payments allocated to oldest debt first

Late fees

Total amount owing

Amount due now

Payment due date

Late fee codes

Solvency resolution reminder

Total amount owing

Amount due now

Payment due date

Here is a sample of our invoice statement pointing out some of the information provided. There are also some sample transaction descriptions with additional explanation of what the codes mean.

You can always check www.asic.gov.au/invoices for details.



Transaction details			
Date	Our reference	Transactions included in this invoice statement	Amount (\$)
20/09/2006	CSBAXXAB12345678 A	Payment received, thank you	100.00 CR
25/09/2006	998877445480 PA	2005 annual review fee - due date 25/11/06	212.00
25/09/2006	001234567211484C 1A	Change of Principal Place of Business - L1	65.00
25/09/2006	001234567211484B 2A	Change of Registered Office Address - L2	270.00

Transaction details

Relevant form code in transaction reference number

Examples of some transaction details

Transactions included in this invoice statement	Amount (\$)	
2004 Annual Review – Due XX/XX/2004	\$212.00	All companies must review their company statement annually and pay their annual review fee by the due date (\$212.00 for proprietary companies).
Late Payment Fee – Up to one month late. Annual Review Fee Due XX/XX/2004	\$65.00	The annual review fee must be paid within 2 months of the review date of the company. The company is charged a late payment fee of \$65.00 if the fee is not paid by the due date.
Late Payment Fee – more than 1 month late. Annual Review Fee Due XX/XX/2004	\$205.00	The company is charged an additional late payment fee of \$205.00 as the the annual review fee remains unpaid more than a month after the due date.
Late notification/review details – L2	\$270.00	The company changed details well before its review date. When it received and reviewed its annual statement it failed to notify the change within 28 days of the date of issue of the annual statement. It eventually notified ASIC more than a month after the 28 day period. The company is charged a late review - fee of \$270.
Appointment Or Cessation Of A Company Officeholder – L2	\$270.00	Appointment or cessation of a company officeholder notified to ASIC more than one month after the 28 day notification period (The transaction reference number contains the form code for the transaction, 484E). The company is charged a late lodgement fee of \$270.

Payment options are outlined including BPay Biller Code and Unique Reference Number

Contact for EFT queries

Amounts not subject to GST - Treasurer's Determination (Exempt taxes, fees and charges)

Payment options

Australia Post
Present the payment slip and payment at your local Post Office. You can pay using cash, cheque or EFTPOS (credit card not available).

Electronic Funds Transfer
To use Electronic Funds Transfer (EFT) please email epaymentenquiries@asic.gov.au.

Mail
Mail this payment slip and your cheque to Australian Securities and Investments Commission, Locked Bag 5000, Gippsland Mail Centre VIC 3841.

IB PAY
Biller Code: 17301
Ref: 22 123456789

Telephone and Internet Banking - BPAY
Call your bank, credit union or building society to make this payment from your cheque or savings account. More info: www.bpay.com.au

In person
Present this payment slip and payment to your local ASIC Service Centre.

Make cheques or postal orders payable to "ASIC".

For help or more information
Telephone 03 5177 3988
Web www.asic.gov.au

123 456 789 Page 2 of 2

Charges

A charge is an agreement or a mortgage taken over a company's assets, undertaking or goodwill.

Notification of a charge

Any person with an interest in the charge i.e. the chargor (the borrower) or the chargee (the lender), can register the charge. The details of the charge need to be registered with us within 45 days of its creation. Do this by:

- lodging a Form 309 *Notification of a charge* with the required fee and evidence to show how the charge was created, usually in the form of an instrument (contract, bill of sale, mortgage deed, etc.). The Form 309 must be signed by, or on behalf of, the company; or by an interested person. Late lodgement fees apply if the Form 309 is lodged more than 45 days after the date of creation of the charge.
- lodging a Form 350 *Certification of compliance with stamp duties law* with the Form 309. If a Form 350 cannot be lodged within the 45 days, the charge will be registered provisionally for 90 days to enable compliance.

Evidence to show how the charge was created

Evidence must be provided to show how the charge was created.

- 1. Charge created by a resolution (a series of debentures).** Charges created by resolution are usually a 'series of debentures'. If this is the case, provide:
 - a copy of the resolution/s passed by members and verified by a statement in writing to be a true copy - Form 911 *Verification of certification of a document*
 - a copy of the first debenture issued in the series, and
 - a statement in writing verifying the execution of the first debenture.
- 2. Charge created by an instrument.** The company can execute an instrument allowing a person or entity to hold such a charge.
- 3. Charge created by a deposit.** The company can deposit either title

documents (i.e. documents that prove or confer title to something but do not include a reference to a charge - for example, a document evidencing title of land) or actual property with the person or entity that will hold the charge.

4. Charge created by other conduct.

Where none of the above three methods are applicable; the company may still provide evidence of the creation of a charge on the basis of actions that have taken place between itself and the chargee. Where the company selects this option then it must describe the nature of the conduct that created the charge.

Provisional registration

Where there is a defect in the Form 309 such as missing or contradictory information, the charge may be provisionally registered for 30 days.

Where there is a delay in having the instrument properly stamped in accordance with the stamp duty laws (Form 350) the charge may be provisionally registered for a period of 90 days.

What happens if the provisional registration period is not long enough?

Where the provisional registration is due to stamp duty deficiencies, the period of provisional registration may be extended for 90 days.

To apply for an extension of time, lodge a Form 327 *Application for extension of time - stamp duty deficiency* before the date on which the provisional registration of the charge is due to expire, stating the additional length of time required. Subsequent applications may be granted where further time is required. Fees apply for each application.

Where the provisional registration is due to missing or contradictory information in the Form 309 there is no provision under the legislation for an extension of time to be granted.

Releasing a charge

To release or to discharge property from a charge a Form 312 *Notification of discharge or release of property from a charge* must be lodged along with the prescribed fee. It must be signed by:

- the person, if the chargee is an individual
- a director or secretary of the company if the chargee is a company
- an authorised representative if the chargee is a corporation other than a company.

Where signed by a person acting under a power of attorney, the form can only be accepted for lodgement if it shows that the person is signing in the capacity of a holder of the power of attorney and proof of the power of attorney is provided.

If the charge is held jointly, a signatory must represent each of the chargees whether that signatory is the same person or a different person for each chargee. The signatory must clearly identify the chargee for whom they are signing, i.e. a signature is required for each chargee. If a series of debentures has been issued, all debenture holders need not sign the Form 312 individually; the trustee for the debenture holders can sign the form.

A liquidator may also sign the Form 312 on behalf of a chargee in liquidation.

The Form 312 is lodged when:

- The charge is fully satisfied (paid). If all outstanding debt is fully paid and the chargee (e.g. bank) no longer needs to keep hold of the charge, it is deemed that the charge can be discharged.
- The charge is partly paid. As an example, part of the charge may be paid to an agreed value.
- Property is released from the charge. Some of the property over which the charge has been placed has been released. For instance, a charge may exist over a parcel of land where a subdivision has occurred and one lot of the subdivision is released.

Business Advisory Committee update

The Business Advisory Committee was established to provide a channel for consultation between the business community and ASIC; offering advice on the impact of proposed changes on business, with particular emphasis on small business, and on the Public Information Program's operations.

In doing so, the Committee advises on the appropriateness and impact on ASIC and business of proposed changes to relevant legislation and corporate registry objectives, operations and initiatives.

Since it was established in late 2004, the Committee has met five times most recently in October.

Issues discussed at this most recent meeting were:

- the Public Information Program's operational highlights for 2005/06
- the government's Standard Business Reporting initiative, and
- other legislative reform projects aimed at reducing the regulatory burden on business.

The Business Advisory Committee has proved an excellent opportunity for us to seek advice on strategic directions, to receive performance feedback and to increase our awareness of trends and needs of business.

Current members are:

Paula Allen

Regional Chairman, Institute of Chartered Accountants

Dallas Beeston

Associate, CPA Australia

Peter Cocks

Financial Controller, National Institute of Accountants

Andrew Madry

Chief Operating Officer, Australian Institute of Company Directors

Andrew Moon

General Manager, Espreon

Geoff Nicoll

Member Business Law Senior Executive, Law Council of Australia

Tony Steven

Chief Executive Officer, Council of Small Business Organisations of Australia

Geoff Stevens

Director, Company Compliance & Advisory Services Australia

Lawrence Tutton

Acting Chair, Legislative Review Committee for CSA (Chartered Secretaries Australia Ltd)

Robert Zitek

Managing Director, Corporate Express Pty Ltd

Jeremy McNeice (Chair)

Deputy Executive Director, Operations, ASIC

Rosanne Bell

Director, Public Information Program, ASIC

Amy Henry

Manager, External Relationships Public Information Program, ASIC

Luke Keet

Manager, Registry Policy, ASIC

Liesl McKay

Manager, Registry Policy, ASIC

SNAPSHOT

By the end of the 2005/2006 financial year:

- * **1,480,684 companies were registered in Australia — 1,460,586 proprietary, 20,098 public.**
- * **1,913,196 documents had been lodged with us during the year. This included 778,549 Forms 484 *Change to company details*.**
- * **71% of eligible documents were lodged electronically.**
- * **14,630,208 searches had been provided — 99.7% electronically.**
- * **\$542,686,000 in revenue was collected.**
- * **770,000 phone calls had been answered.**

The 2005-06 ASIC annual report is available at www.asic.gov.au/annualreport.

Corporate key reminder

If you are lodging any of the following forms on paper, you must quote your current corporate key or the form will be returned to you for completion.

- Form 362 *Notification of appointment or cessation of a registered agent by a company*
- Form 484 *Change to company details*
- Form 486 *Notification to nominate, change or cease a contact address for a company*

If you lose your corporate key, forget the number, or feel that the security of the

corporate key has been compromised (e.g. someone has seen the number that should not have access to that information), you can request the cancellation of the existing corporate key for your company and ask for a new corporate key to be issued.

Apply online at [www.asic.gov.au/corporate key](http://www.asic.gov.au/corporate-key).

Once you are registered for online access you do not need to include your corporate key when lodging these documents electronically.

Registered agent forums

Over the last two years we have run a series of registered agent forums around the country for different agent groups. The first series covered general reporting obligations and earlier this year we ran some to support online lodgement.

Many agents who took part thought that the sessions offered them valuable

information as well as a good opportunity to raise any issues they had.

If you have ideas for topics that could be covered in possible future forums let us know. Email us at registered.agent@asic.gov.au. Your information would be useful for our future planning.



System outages

We recently experienced problems with our revenue system that caused delays in issuing annual statement packs.

The problem was rectified.

If we do have system problems that could impact on our clients we publish the information on our website. Just go to the Service availability link on our Search, Lodge and Apply pages.

Apologies

Our June InFocus, Volume 15 Issue 1 had an omission.

The last three lines were missing from the article *Reinstatement of a registered company*.

The final paragraph should actually read:

People who feel disadvantaged by the deregistration of the company (e.g. creditors, other bodies taking legal action against the company, a former liquidator) may also apply to the Court for the reinstatement of the company.

The version of InFocus published on our website contains the complete text.

We apologise for any inconvenience this may have caused.

Contact

Visit our website at www.asic.gov.au

For consumer information visit www.fido.gov.au

Client Contact Centre

Email info.enquiries@asic.gov.au

Contact our Client Contact Centre's Enquiry Line on **03 5177 3988** (Weekdays 8.30 am to 8 pm AEST)

For any questions about:

- ASIC invoices
- fees
- lodging company forms or
- searching our company database or registers.

Infoline

Email infoline@asic.gov.au

Contact our Client Contact Centre's Infoline on **1300 300 630** (Weekdays 8.30 am to 8 pm AEST)

For information about;

- fundraising
- licensing
- disclosure and takeovers
- making a complaint about companies and services
- financial services regulation, services and products
- your AFS licence
- investors' and consumers' rights or
- copies of ASIC publications or documents.

Editorial Enquiries

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