



Running a small
business in Australia
What you need to know



ASIC

Australian Securities &
Investments Commission



If you operate or are planning to operate a small business as a registered company or under a registered business name, this brochure is for you.

Disclaimer

Please note that this is a summary publication giving you basic advice. It does not cover the whole of the relevant law regarding these topics and it is not a substitute for professional advice.



Who is ASIC?

The Australian Securities and Investments Commission (ASIC) is the Australian Government agency that regulates all companies, financial markets, and providers of financial services and consumer credit in Australia.

We contribute to Australia's economic reputation and wellbeing by ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers.

ASIC and small business

In Australia, small businesses employ half the workforce and make a significant contribution to Australia's economy.

ASIC assists small businesses by providing easy to understand information so that they operate lawfully.

Small business operators deal with ASIC when they:

- register a company or a business name
- take action to comply with obligations relating to the company or business name
- renew the registration of a company or business name
- close a company or business name
- lodge a report of misconduct
- check ASIC's registers to verify information.

Starting a small business

Before starting a small business, there are some important things you will need to consider, including:

- the type of business structure that best suits your needs and requirements
- whether you need to register a business name.

Types of business structure

When you start a business, it is important to choose a structure that best suits your needs. The most common types of business structure are:

Type	Description
Sole trader	A sole trader is the simplest business structure. The structure is inexpensive to set up because there are few legal and tax formalities. If you operate as a sole trader, you are not a separate legal entity so you will be responsible for all aspects of the business, including any debts the business incurs.
Partnership	A partnership is two or more people or entities who do business as partners or receive income jointly. In a partnership, control or management of the business is shared. A partnership is not a separate legal entity, so you and your partners are responsible for all debts and obligations of the business. A formal partnership agreement is common, but not essential.
Company	A company is a separate legal entity. This means it has the same rights as a person and can incur debt, sue and be sued. Being a separate legal entity also means that there are higher set-up and administrative costs, and higher levels of legal responsibilities imposed on both the company and the directors. Companies must be registered with ASIC.
Trust	A trust is an obligation imposed on a person (called a trustee) to hold property or assets (such as business assets) for the benefit of others (known as beneficiaries).

Below is a snapshot of the key features of each business structure:

	Sole Trader	Partnership	Company	Trust
Complexity of business structure	Simple	Moderate	Complex	Highly complex
Cost	Low	Medium	Medium to high	High
Legal obligations	Low	Low to medium	High	Medium
Tax obligations	Low	Low	Medium	High
Separate legal entity	No	No	Yes	Yes
Liability	Unlimited	Unlimited	Limited	Limited (with a corporate trustee)



Before deciding on a business structure, ASIC strongly recommends you get professional business advice.



Registering a business name

A business name is the name or title under which a person or company conducts business.

You need to register a business name if you are a sole trader and you conduct business under a name other than your own personal name, or if you operate a company that conducts business using a name that is different to the registered company name.

You can choose to register a business name for one year or for three years. Be sure to consider what is required to maintain a business name, including fees and business name availability, and what to do if you would like to transfer or cancel the business name. All business names used in Australia are registered with ASIC.

Choosing to start a company

If you decide that a company structure is right for you, you will need to complete the registration process with ASIC and ensure that the company complies with certain obligations under Australian law. Some of the most significant are:

Obligation	Description
Have a current registered office	This is the address ASIC will use to send documents to the company
Have a principal place of business	This is the location from which the company operates its business
Disclose personal details	A company must inform ASIC of the name, date of birth and current residential address of all directors
Maintain the business name	If the company chooses to operate under a business name, you must ensure that the business name is registered and renewed when registration expires (every one or three years). ASIC will send the company a business name renewal notice 30 days before the renewal is due
Notify ASIC of key changes	This includes changes to the company’s registered office, principal place of business, directors and business names. You must notify ASIC of any changes within 28 days to avoid late fees
Keep financial records	A company must keep up-to-date financial records that correctly record and explain transactions and the company’s financial position. Larger companies have additional obligations to lodge financial reports with ASIC
Pay relevant fees to ASIC	This includes company registration fees, annual review fees, lodgement fees and late fees
Check the annual statements	Each year, ASIC will send your company an annual statement. To remain a registered company, you will need to: <ul style="list-style-type: none">• check the details on your company statement and update any changes with ASIC• pay the associated annual company review fee• pass a solvency resolution stating that you have reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.



Other obligations may apply. Get professional advice if you are uncertain.

Running your company

While running a company, directors must also personally comply with certain obligations imposed under Australian law. Some of the most significant are:

Obligation	Description
Exercise care and diligence, and act in good faith and for a proper purpose	<p>When you make a business judgement or business decision, you must ensure that you:</p> <ul style="list-style-type: none">• make the judgement in good faith and for a proper purpose• do not have a material personal interest in the subject matter of the judgement• inform yourself of the subject matter to the extent that you reasonably believe to be appropriate• rationally believe that the judgement is in the best interests of the company
Use your position and information appropriately	<p>You must not use your position as a director of a company – or information obtained because you are or have been a director, officer, or employee of a company – to cause detriment to the company or to gain an advantage for yourself or someone else</p>
Ensure the company is solvent and can pay its debts on time	<p>If there are grounds for suspecting that the company is insolvent, you must not trade, incur debt, or continue to conduct business as usual. Instead, you should immediately seek professional business advice</p>
Report, deliver records and provide assistance to the liquidator	<p>If a liquidator has been appointed to the company, the director has an obligation to give the liquidator:</p> <ul style="list-style-type: none">• a statement about the company’s business, property, affairs and financial circumstances through a document called the <i>Report as to affairs</i> (RATA)• deliver all the records of the company to the liquidator• provide assistance to the liquidator as and when requested. An example of this is by responding to the liquidator’s letters
Not intentionally transfer the business and assets of an indebted company into a new company	<p>This is known as ‘illegal phoenix activity’. The new company often has the same directors and is involved in the same industry as the old company.</p>



There are various penalties and consequences – including civil penalties, compensation proceedings and criminal charges – for directors who fail to comply with their obligations under Australian law.



To assist you as a company director to comply with your obligations, it is important to know that:

- the company owns the assets
- the company is generally responsible for paying debts incurred by the company, which may include trade creditors, employees and statutory bodies such as the Australian Taxation Office
- any money invested in the company (e.g. through loans to the company or by owners or investors buying shares in the company) belongs to the company and must be used for a proper company purpose
- the owners or shareholders of the company are entitled to take a dividend payment (e.g. money) from the company, but only after the company has ensured it has the ability to pay its debts owing to trade creditors, employees and statutory authorities
- while a company is usually responsible for paying its debts, a director may become personally liable. This generally occurs when a director breaches their legal obligations (e.g. the company continues to trade while it is insolvent).

Protecting your business

As a business operator, it is important to protect your interests when you deal with other businesses. These four simple steps can help:

Steps	Description
Ask questions	<p>Ask questions about the company or business that you are thinking of dealing with. Some examples include asking the company or business for their Australian Company Number, Australian Business Number, and any licence or authority they have to operate in certain industries</p>
Verify the information	<p>Verify the information about the companies, businesses or licences by checking ASIC's registers and with other government agencies or relevant authorities. Basic information about companies, business names and licences are free and available from ASIC's registers. ASIC's registers can help you:</p> <ul style="list-style-type: none">• confirm if the company is registered and who the officeholders are• confirm the business name and who holds the business name• check whether a company and/or person associated with a company is banned or disqualified from:<ul style="list-style-type: none">• managing companies• being involved in financial services• being involved in the credit industry• check whether a company and/or person associated with a company has entered into an enforceable undertaking. Enforceable undertakings are undertakings given to and accepted by ASIC that are enforceable in a court
Seek help	<p>Seek help if you require more assistance from a professional business adviser (accountant or lawyer)</p>
Monitor	<p>Monitor companies by registering with our free Company Alert service. This service will automatically notify you by overnight email if documents are lodged relating to the company you nominate. The categories of documents you can select include:</p> <ul style="list-style-type: none">• internal administration documents• debt documents• deregistration documents• financial documents.



Closing your company

Even after the company has stopped trading as a business, it will still be registered with ASIC.


This means that you must continue to meet the legal obligations of a company, including keeping your details up to date and paying the annual review fee. You may wish to close your company so that you can save both time and money.

In addition, if you have a registered business name and stop trading as a business, you may also need to take steps to cancel the business name.

Do you suspect possible misconduct?

If you suspect that someone has broken any laws that relate to how companies and businesses are operated, you can lodge a report of misconduct with ASIC.

The information in these reports assists ASIC to do its job and improve behaviour.



Resources and support

ASIC

ASIC website – www.asic.gov.au

The best place to start is the Small Business Hub on ASIC's website, which has a range of small business resources to give you more comprehensive information. You will also have the option to sign up to ASIC's free monthly *InFocus* e-newsletter, designed to keep you up to date with ASIC-related news and information on companies and business names.

Alternatively, you can call the ASIC Customer Contact Centre on 1300 300 630 or send mail to ASIC at PO Box 4000 Gippsland Mail Centre VIC 3841.

If you contact ASIC after reading this material, please tell the ASIC officer you have read *Running a small business in Australia – What you need to know*.

Business.gov.au

Business.gov.au, created by the Department of Industry, Innovation and Science – AusIndustry, is a whole-of-government online resource providing essential information on planning, starting and growing a business.

In addition, this website offers information specifically for businesses, in relation to:

- **grants and assistance** offered by government to help businesses
- **advisory services** in your state or territory, some of which are free or have minimal costs involved
- **events** offered throughout Australia, including seminars, training courses and workshops.



Translating and Interpreting Service

If you have difficulty speaking or understanding English, call the Translating and Interpreting Service (TIS National) on 131 450.

A TIS interpreter who speaks your language will help you call ASIC, and provide two-way translation during the call.

The Translating and Interpreting Service operates nationally and provides its service for over 100 languages 24 hours a day, 7 days a week. Please contact the Translating and Interpreting Service during business hours in order to speak to ASIC staff.



www.asic.gov.au | www.moneysmart.gov.au | ASIC Infoline: 1300 300 630

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