

## **ASIC Fact Sheet - Your company and the law:**

As a director or secretary of a small company, you must follow the requirements set out in the *Corporations Act 2001* (Corporations Act) and you must:

- be honest and careful in your dealings at all times
- know what your company is doing
- take extra care if your company is operating a business because you may be handling other people's money
- make sure that your company can pay its debts on time
- see that your company keeps proper financial records
- 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 just for personal or taxation reasons, and
- 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 and dishonestly, it may still be a crime.

Note if you have personal interests that might conflict with your duty as a director, you must generally disclose these at a directors' meeting. This rule does not apply if you are the only director of a proprietary company.

The company's constitution (if any) or rules may set out the directors' powers and functions. As a director you must be fully up-to-date on what your company is doing:

- Find out and assess for yourself how any proposed action will affect your company's business performance, especially if it involves a lot of the company's money.
- Get outside professional advice when you need more details to make an informed decision.
- Question managers and staff about how the business is going.
- Take an active part in directors' meetings.

Note directors must be 18 years or older and you cannot act as a director or secretary (or manage a company) without court consent if you:

- are an undischarged bankrupt
- are subject to a personal insolvency agreement or an arrangement under Part X of the *Bankruptcy Act 1966* (Bankruptcy Act) that has not been fully complied with
- are subject to a composition under Part X of the Bankruptcy Act and final payment has not been made, or
- have been convicted of various offences such as fraud or offences under company law, such as a breach of your duties as a director or insolvent trading. If you have been convicted of one of these offences you must not manage a company within five years of your conviction. If imprisoned for one of these offences, you must not manage a company within five years after your release from prison.

As a director, the law makes you personally responsible for keeping proper company records. You must see that the company keeps up-to-date financial records that:

- correctly record and explain its transactions (including any transactions as a trustee), and
- explain the company's financial position and performance.

All companies must have financial records so that:

- true and fair financial statements of the company can be prepared if needed
- financial statements can be conveniently and properly audited if necessary, and
- the company can obey the tax laws.

Some of the basic financial records that the law may require a company to keep are:

- general ledger, recording all the company's transactions and balances (e.g. revenue, expenses, assets, liabilities) or summarising transactions and balances detailed in other records
- cash records (e.g. bank statements, deposit books, cheque books, petty cash records)
- debtor and sales records (e.g. a list of debtors and their balances, delivery dockets, invoices and statements issued, a list of all sales transactions)
- creditor and purchases records (e.g. purchase orders, invoices and statements received and paid, unpaid invoices, a list of all purchases, a list of all creditors and their balances)
- wage and superannuation records
- a register of property, plant and equipment showing transactions and balances in relation to individual items
- inventory records
- investment records (e.g. contract notes, dividend or interest notices, certificates)
- tax returns and calculations (e.g. income tax, group tax, fringe benefits tax and GST returns and statements), and
- deeds, contracts and agreements.

When a company is set up, you must:

- register your company name with ASIC and obtain an [Australian Company Number](#) (ACN)
- have a registered office. (If your company doesn't occupy the same address as the registered office, then you must have written consent from the person who occupies the registered office.)

Make sure that you:

- display the company name at every place at which your company carries on business and that is open to the public. Also, a public company must display its name and the words 'registered office' prominently at its registered office.
- display the company name, the words 'Australian Company Number' (or 'ACN') or 'Australian Business Number' (or 'ABN') and the relevant number on:
  - the common seal (if the company has one)
  - every public document of the company
  - every negotiable instrument (e.g. cheque, promissory note) of the company, and
  - all documents lodged with ASIC.

Your company must also keep:

- registers of members (shareholders)
- registers of option holders (if you have them) minutes of general meetings
- minutes of meetings of directors
- registers of charges created by the company over company property (s271 of the Corporations Act was removed from registration under the Personal Property Securities Act 2009. You are required to have this register and make entries up until this point in time), and
- financial records that enable an assessment of the company's financial position and performance and are sufficient for financial statements to be prepared (and audited if necessary) for at least seven years after the transactions are completed.

The attached annual statement sets out the company's details recorded in ASIC's register, such as the names and addresses of its directors and secretary, registered office, principal place of business, ultimate holding company (if any), share details and members' details (members' names and addresses only apply to proprietary companies).

If these details are correct and no other changes have occurred that require you to notify ASIC, then within two months after the review date:

- you need to pay the annual review fee shown in the invoice that accompanies the annual statement, and
- the director(s) need to pass a solvency resolution.

If any details on the statement are no longer correct, please notify us and we will make the necessary changes. Note you have 28 days from the statement's issue date to lodge the form.

To avoid the payment of late fees or other non-compliance action you must:

- pay the annual review fee within two months after the review date
- lodge a Change to company details to update your company's details if they change during the year, within 28 days after the change, and
- lodge a Change to company details (if required) to update your company's details, within 28 days after your annual statement's issue date.

It is also important that the company's directors pass a solvency resolution within two months after the company's review date, unless the company has lodged a financial report with ASIC within twelve months before the review date.

A **positive** solvency resolution means that the directors think that there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable. You don't have to lodge notification of a positive solvency resolution with ASIC, but you must pay the company's annual review fee. Payment of the fee is taken to be a representation by the directors that the company is solvent.

A **negative** solvency resolution means that the directors think that there are not reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable. If the directors pass a negative solvency resolution we must be notified using [Form 485](#) *Statement in relation to company solvency* within seven days after the resolution has been passed.

If you are unable to pass a solvency resolution within two months after the company's review date, ASIC must be notified using Form 485 within seven days after the end of the two-month period following the review date.

It is important we keep ASIC informed of changes in your company's details, some of the more common things you must tell us are set out in the following table. The Corporations Act requires you to tell us about these changes within a certain time period and if you tell us after this time, you may have to pay a late fee.

<b>Change place you keep registers</b>	If you want to keep registers of shares, options or charges at an address other than the company's registered office or principal place of business, you must tell us where they are being kept within seven days after the change.
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<b>Change of officeholders or details of officeholders</b>	If the officeholders (e.g. director, secretary or alternate director) of the company change, or if any personal details change, such as their residential address, you must tell us within 28 days after the change. You must also lodge the terms of appointment when appointing an alternate director.
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<b>Resignation of director or secretary</b>	A director or secretary can tell us directly if they retire or resign. A copy of their letter of retirement or resignation from the company must be submitted with the form.
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<b>Change of registered office</b>	If you change the company's registered office or principal place of business, you must tell us within 28 days after the change.
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<b>Change of company name</b>	If the company has resolved to change its name, you must tell us within 14 days after the resolution was passed. (New names are subject to availability criteria.)
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<b>Issue of new shares</b>	If you issue new shares, you must tell us within 28 days from the date of issue.
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**Change to members (shareholders)** Proprietary companies must advise us within 28 days of changes to the top 20 members in each class of share held. Such changes include changes of name and address, increase or decrease in shares held and cessation of membership.

**Changes to ultimate holding company** Proprietary companies must advise us within 28 days following changes to their ultimate holding company.

**Division or conversion of shares** If you divide or convert shares into different classes, you must tell us within 14 days from the date of the division or conversion.

**Negative solvency resolution** You must notify us of a negative solvency resolution within seven days after the resolution is passed.

**Solvency resolution not passed** If no solvency resolution is passed within two months after the review date you must notify us within seven days after that period.

**Change of company review date** You may apply to change your company's review date if it is considered unsuitable. You must, however, be able to satisfy certain conditions to have the review date varied.

Finally, you must ensure that your company is able to pay all of its debts as and when they become due for payment. A company is 'insolvent' if it cannot pay all of its debts as they become due and payable.

Some common signs of financial trouble are:

- low operating profits or cash flow from the main 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.

Do not assume that you will be able to trade out of the problem. Delay could be damaging to the company and to you personally, and may reduce the options available.

If your company is in financial difficulty or in danger of being insolvent, seek immediate advice from an insolvency professional. They will be able to explain your options to you. Your options may include re-structuring your company's affairs, changing your company's activities or appointing a voluntary administrator or liquidator to the company.

By law, you must prevent your company from incurring a debt when it is insolvent or about to become so. This means you must consider whether you have reasonable grounds to believe that the company will be able to pay a new debt when it becomes due, as well as pay all the other debts.

You may expose yourself to criminal prosecution, substantial fines or to action by a liquidator, creditors of the company or ASIC to recover amounts lost by creditors due to your actions. Note your personal assets—not just your company's—may be at risk and if you need any assistance please contact ASIC direct or our office immediately.