

# Company Registration (Pty Ltd) Information Checklist

This handy guide provides an overview of the steps involved when registering a company in Australia, as well as a checklist of the information you need to provide when completing your online company registration application form.

## WHAT IS A COMPANY?

Operating your business as an incorporated entity such as a proprietary limited (Pty Ltd) company will transform your enterprise into a separate legal entity. This means it has the same rights as a natural person and can incur debt, sue and be sued.

The company's owners (called 'members' or 'shareholders') can limit their personal liability and are generally not liable for company debts (unless they give personal guarantees to borrow money).

Companies are managed by company officers who are called directors and company secretaries.

Companies are taxed at a different rate to individuals and other structures.

Companies must be registered with ASIC, and company officeholders have legal obligations under the Corporations Act.

## CHOOSING A COMPANY NAME

Your company name must show its legal status (e.g. include 'Proprietary' or 'Pty') in the name if it's a proprietary company. It cannot be a name that is already registered to a company or business and cannot include certain words or phrases.

It is also usually advisable to check if your proposed name is similar or identical to any registered or pending trademarks.

It is possible to use the Australian Company Number as your company name.

You can check if your proposed company name is available by using the handy name availability checker tool on the home page of [www.abnaustralia.com.au](http://www.abnaustralia.com.au). Alternatively you can search ASIC's company register directly on ASIC's website.

## COMPANY REGISTRATION OVERVIEW

When we register an Australian company, the company can conduct business throughout Australia without needing to register in individual states and territories.

To start the process for registering a company you need to email us on [contact@abnaustralia.com.au](mailto:contact@abnaustralia.com.au) or otherwise visit our company registration page located at:

[www.abnaustralia.com.au/companies/proprietary-company-limited-by-shares](http://www.abnaustralia.com.au/companies/proprietary-company-limited-by-shares)

From this page it is possible to start the company registration process by completing our online company registration form, or by completing our downloadable fillable PDF forms.

For international clients, we recommend contacting us before starting any company registration form.

Customers who register their company through ABNAustralia.com.au will receive a comprehensive company documentation package which includes the following items:

- A Certificate of Incorporation from ASIC
- Company constitution
- Officeholders' consent
- Consent to act as Public Officer
- Directors minutes
- Application for shares
- Share certificates
- Shareholder and officeholder registers
- Statutory registers as required
- Journals
- Printing, binding, and delivery options available.



## LEGAL REQUIREMENTS FOR COMPANIES

Your company will need to comply with its obligations under Australian law including the Corporations Act. We have outlined some of your legal requirements here below.

- ☑ You will need to set up a current registered office as ASIC will use this address to send documents to the company.
- ☑ Your principal place of business will be the location from which your company operates its business.
- ☑ A company must inform ASIC of the name, date of birth and current residential address of all directors.
- ☑ If the company conducts business using 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.
- ☑ You must notify ASIC of changes to the company's registered office, principal place of business, directors and business names within 28 days to avoid late fees.
- ☑ 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.
- ☑ Fees that companies must pay to ASIC include company registration fees, annual review fees, lodgement fees and late fees.
- ☑ Each year, ASIC will send your company an annual statement. To remain a registered company, you will need to check the details on your company statement and update any changes with ASIC, pay the associated annual company review fee, and 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.
- ☑ You must display your company name at every location where you carry on business and are open to the public.
- ☑ You must include your Australian Company Name (ACN) or Australian Business Name (ABN) on all your company documents.
- ☑ Your company should always maintain a register of all the company's members, copies of minutes from any general meetings, copies of minutes from any directors' meetings, and any relevant financial records.
- ☑ Make sure you get trusted professional advice if you are uncertain about your legal obligations.

## LEGAL REQUIREMENTS FOR DIRECTORS

The legal requirements of officeholder are set out in the Corporations Act 2001.

A director's job is to manage the business affairs of a company. Your company's constitution (if you have one) may set out a director's powers and functions.

As a director or officeholder, your key duties include:

- ☑ being honest and careful in all your dealings
- ☑ understanding what your company is doing
- ☑ making sure your company can pay its debts on time
- ☑ ensuring your company keeps proper financial records
- ☑ acting in the company's best interests, even if this conflicts with your personal interests
- ☑ using any information only for the good of the company. Using information to gain an unfair advantage for yourself or others could be a crime.
- ☑ If you have any personal interests that conflict with your duties as a director, you should disclose these at a directors' meeting.

To be an officeholder, you must be at least 18 years old. The law does not allow you to be an officeholder or manage a company (without court consent) if:

- ☑ you are currently bankrupt
- ☑ you are still subject to a personal insolvency agreement or composition under the Bankruptcy Act 1966, or
- ☑ have been convicted of offences like fraud or breaching your duties as an officeholder.

If you have been convicted of an offence committed against the corporation's interests, under the Corporations Act 2001 or for an offence involving dishonesty, you cannot manage a company or be an officeholder within five years of your conviction.

Similarly, if you have been imprisoned for an offence as mentioned above, you cannot manage a company within five years after your release from prison.

If you are a current officeholder and you have been convicted of an offence or are declared bankrupt, you are automatically disqualified. Your company must notify ASIC that you're no longer an officeholder.

## RIGHTS OF COMPANY SHAREHOLDERS

A member of a company is often called a shareholder. Members of a company have certain rights and responsibilities, including:

- ☑ A member of a company must be a person (e.g. John Citizen), a body corporate (e.g. XYZ Company Pty Ltd), or a body politic (e.g. State of Queensland). A member is an entity that can own property, sue or be sued.
- ☑ The Corporations Act 2001 (Corporations Act) does not specify a minimum age for a member of a company. However, a company may make its own determination regarding a minimum age for a member.
- ☑ All companies must have at least one member. Proprietary companies must have no more than fifty members that aren't employees of the company.
- ☑ The members of a company own the company, but the company has a separate legal existence and the company's assets belong to the company.
- ☑ As a member you are not liable (in your capacity as a member) for the company's debts. Your only financial obligation is to pay the company any amount unpaid on your shares if you are called on to do so.
- ☑ Proprietary companies must tell ASIC of any changes to member details and the share structure, including the issue or cancellation of shares and share conversion or division.
- ☑ The share register is usually held at the company's registered office and contains the name and address of each member, the number of shares held, share classes and the amount paid and unpaid on the shares.
- ☑ Anyone has a right to inspect a copy of a company's share register. As a member, you may inspect the register free of charge. However, the company may charge other people to inspect the register.
- ☑ Different classes of shares may have different rights to vote at meetings of members. Unless specified by the company's constitution, each member has one vote in a show of hands and, in a poll, each member has one vote for each share held.
- ☑ An ordinary resolution must be passed by a majority (normally, more than 50%) of the votes cast by members entitled to vote on the resolution.
- ☑ A special resolution must be passed by at least 75% of the votes cast by members entitled to vote on the resolution.

## OTHER FREQUENTLY ASKED QUESTIONS

Please see below a summary of the key considerations and facts relevant to a proprietary company registered in Australia.

### Minimum Capital Requirement

No minimum capital requirement.

### Legal Liability

A company's shareholders' liability is generally limited to the extent of their initial investment, and the amount, if any, unpaid on their shares.

### Tax Presence

The company is taxed at a fixed rate on its income (and capital gains). Profits are usually distributed by way of dividend. Dividends may be "franked" in effect to give recipient shareholders a credit for the tax paid by the company.

### Incorporation Process

File an Application for Registration as an Australian Company with Australian Securities and Investments Commission (ASIC) and the prescribed fee is paid. Upon incorporation, ASIC will issue to the company a certificate of incorporation and an Australian company number (ACN). Taxation registrations are separate from the incorporation process.

### Business Recognition

Well regarded and widely used.

### Shareholder Meeting Requirements

Not required to hold an annual general meeting but actions requiring shareholder approval require a shareholders' meeting or a written resolution.

### Board of Director Meeting Requirements

As required (no prescribed minimum). Usually at least one meeting is held each year (e.g. to approve accounts or confirm solvency).

### Annual Company Tax Returns

Must lodge a (federal only) company tax return each year, even if the business doesn't expect to pay any income tax.

### Business Registration Filing Requirements

A company must confirm its corporate details and also pay a review fee to ASIC each year.

### Exit Strategy

Deregistration – if there are no liabilities and minimal assets (currently AU \$1,000). Application to deregister is lodged with ASIC.

Liquidation – if there are insolvent or significant assets or liabilities to be dealt with. A formal process involving the appointment of a liquidator, providing proof of debts, realizing assets, paying creditors and distributing any surplus.

#### **Annual Corporate Maintenance Requirements**

A company must confirm its corporate details and pay a review fee to ASIC each year. Depending on size and ownership, financial statements may need to be filed each year. The accounting requirements imposed on a proprietary company under the Corporations Act depend on whether the company is classified as small or large and whether it is foreign owned. Unless granted relief from ASIC, large proprietary companies are required to prepare an annual financial report which must be audited.

#### **Director/Officer Requirements**

Must have one director who must ordinarily reside in Australia.

#### **Local Corporate Secretary Requirements**

Not required to have a company secretary, but if a company has one or more, at least one of them must ordinarily reside in Australia.

#### **Local Office Lease Requirement**

Must have a registered office in Australia. This does not have to be owned or leased. Corporate records are generally required to be maintained at the registered office.

#### **Nationality or Residency Requirements for Shareholders, Directors and Officers**

Must have at least one director who must ordinarily reside in Australia. If a company has one or more company secretaries, at least one of them must ordinarily reside in Australia. There are no nationality requirements for shareholders.

#### **Summary of Director's, Officer's and Shareholder's Authority and Limitations Thereof**

Board of directors has overall management responsibility. Shareholders have no direct management rights but to elect directors and may be required to approve significant transactions.

#### **Public Disclosure of Identity of Directors, Officers and Shareholders**

Full details of directors and shareholders are publicly available on ASIC's database.

#### **Restrictions Regarding Appointment of Nominee Shareholders or Directors**

None.

#### **Minimum and Maximum Number of Directors and Shareholders**

There must be a minimum of one shareholder and a maximum of 50 shareholders, not including employee shareholders. For directors, there must be at least one director who must ordinarily reside in Australia.

#### **Minimum Number of Shareholders Required**

One shareholder is sufficient.

#### **Removal of Directors or Officers**

Generally, directors may be removed by shareholders.

#### **Board Meeting Requirements**

Formally nil, but there is usually at least one board meeting per year. Decisions of directors can be effected by a written resolution.

#### **Licenses Required to Conduct Business in Australia**

Apart from the usual tax registrations applicable to all trading companies, namely:

- (i) An Australian Business Number (ABN);
- (ii) An Australian Tax File Number (TFN); and
- (iii) Goods and Services Tax (GST) registration.

There are no general registrations, licenses or permits that are required to establish a company or conduct business in Australia. There may be licenses required relevant to specific industries your company operates in (eg liquor license in NSW)

#### **Process of Purchasing and Utilising a Shelf Company**

A "shelf" company may be purchased from third party suppliers such as ABN Australia, but given the speed and ease of incorporation this is not frequently used.

### **CONTACT US AND SUPPORT**

ABN Australia are a family run business that has been providing company registration and compliance services to domestic and international clients since 1976.

If you would like to know more about registering a company in Australia, please contact us by:

- emailing [contact@abnaustralia.com.au](mailto:contact@abnaustralia.com.au); or
- calling +61 1300 226 226.

More information is available on our website at:

[www.abnaustralia.com.au/companies/proprietary-company-limited-by-shares](http://www.abnaustralia.com.au/companies/proprietary-company-limited-by-shares)