

**ASIC**

Australian Securities &amp; Investments Commission

[For companies](#) > [Running](#) > Your company and the law

## Your company and the law

[What does the law expect of you personally?](#)

[What work must a director do?](#)

[Can anyone be a director or secretary?](#)

[What happens to dishonest directors?](#)

[What company records must you keep?](#)

[What are financial records?](#)

[Company housekeeping—other records and registers](#)

[Your annual statement](#)

[Keep us informed of changes in your company's details](#)

[How do you get the information to us?](#)

[What if your company can't pay its debts?](#)

[How do you close down your company?](#)

[What can you find out about other companies?](#)

[A final word and to find out more](#)

If you're a director or secretary of a small company, you must follow the requirements set out in the *Corporations Act 2001 (Cth)* (Corporations Act).

ASIC is the company law watchdog. We've put together this guide to let you know about the most important things the law requires directors and secretaries of small companies to do.

Obviously we can't explain every obligation or cover every situation here. At times you may need professional legal advice.

Even if you appoint an agent to look after the company's affairs, you—not the agent—may still be held responsible for those legal obligations.

### What does the law expect of you personally?

As a director, 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.

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.

### What work must a director do?

You and any other directors will control the company's business. Your company's constitution (if any) or rules may set out the directors' powers and functions.

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.

Only be a company director or a company secretary if you are willing, able and have enough time to put in the effort.

Avoid any company where someone offers to make you a director or secretary on the promise that 'you won't have to do anything' and 'just sign here'. You could be exposing yourself to many legal liabilities.

### Can you sell shares to the public?

Proprietary companies are generally not allowed to raise money from the public by selling shares. Avoid anything to do with illegal fundraising.

### Can anyone be a director or secretary?

You must not 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* (Cth) (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.

If you become bankrupt, enter into a personal insolvency agreement or are convicted of a relevant offence at a time when you're a director or secretary then you automatically lose that

office. The company must then notify ASIC that you're no longer a director or secretary of the company. Find out more by reading our information sheet: [INFO 14 Bankruptcy and personal insolvency agreements](#).

ASIC can also ban you from being a company director in certain situations.

If you're not allowed to be a company director or secretary, you're not allowed to manage a company. It is a serious offence to set up dummy directors while you really manage the company.

Directors must also be 18 years or older.

## What happens to dishonest directors?

Every year, the courts send dishonest and reckless company officers to prison, and impose heavy fines and award damages.

As the company watchdog, we investigate corporate crime. You can **report dishonest company directors** to us. We may take a number of steps against directors who fail in their duties.

## What company records must you keep?

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.](#)

If your company is a 'small proprietary company' (as defined in the Corporations Act) it will generally not have to prepare formal financial reports under that Act each year and lodge them with ASIC. However, you must still keep financial records, and may need financial reports for managing and monitoring your company's financial position and performance for tax purposes or for raising finance.

Large proprietary companies and public companies—even non-profit public companies—must prepare financial reports, have them audited and lodge them with ASIC.

## What are financial records?

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

- [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 \(e.g. bank statements, deposit books, cheque butts, petty cash records\)](#)

- 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)
- deeds, contracts and agreements.

A company would also normally prepare the following statements regularly (e.g. monthly) to manage its business performance and provide to lenders, etc:

- **Statement of Financial Performance**—a statement showing the company's revenue and expenses and the profit or loss that results from these items
- **Statement of Financial Position**—a statement showing the things of value the company owns and the debts the company owes, and
- **Statement of Cash Flows**—a statement summarising cash inflows and outflows.

Get professional advice if you have any doubt about the content or type of financial records to keep. The lists above give examples only, because the financial records you need will vary from company to company.

You may keep some financial records electronically, but you must be able to convert them into hard copy so that you can give them to anyone entitled to inspect them. Make backup copies of electronic records regularly, for example weekly or daily.

See also our information sheet, [INFO 76 What books and records should my company keep?](#)

Your company must also keep some other basic records—see Company housekeeping below for more details.

## Company housekeeping—other records and registers

All company officers must make sure that the company attends to some basic 'housekeeping' matters. The directors remain ultimately responsible for the company's compliance with the Corporations Act.

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 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, 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.

For more about the ASIC forms your company must lodge, see our information sheet [INFO 20 Checklist for registered companies and their officers](#).

## Your annual statement

Each year within a few days of your company's annual review date (usually the anniversary of your company's registration) we will send you an annual statement to one of the following:

- your electronic inbox if you have registered to use our electronic lodgement systems
- the address of your registered agent if you have appointed one
- your nominated mailing address if you aren't registered to use our electronic lodgement systems
- your company's registered office if none of the above apply.

If you have not received your annual statement within 5 days after the review date you should

contact us.

### Check your annual statement

The 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), members and share details.

If these details are correct and no other changes have occurred that require you to notify ASIC, then within 2 months of 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, you must update them using [Form 484 Change to company details](#). You have 28 days from the statement's issue date to lodge the form.

We may also require information to be lodged, for example where we notice that data is missing.

### Pay fees

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

- pay the annual review fee within two months of the review date
- lodge Form 484 to update your company's details if they change during the year, within 28 days of the change, and
- lodge Form 484 (if required) to update your company's details, within 28 days of your annual statement's issue date.

For more, see our information sheet, [INFO 3 Annual statements and late fees](#).

### Pass a solvency resolution

The company's directors must pass a solvency resolution within 2 months after the company's review date, unless the company has lodged a financial report with ASIC within the 12 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 ASIC must be notified using [Form 485 Statement in relation to company solvency](#) within 7 days after the resolution has passed.

If the directors don't pass a solvency resolution within 2 months of the company's review date, ASIC must be notified using Form 485 within 7 days after the end of the 2-month period following the review date.

### Keep us 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. If you tell us after this time, you may have to pay a late fee.**

Type of activity or duty		Form
<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 7 days after the change.	909
<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.	484
<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 sent with the form.	370
<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.	484
<b>Charge on company property</b>	If you create a charge on company property, you must tell us within 45 days.	309 & 350
<b>Vary charge on company property</b>	If you assign or vary a charge over the company's property, you must tell us within 45 days from the date of the variation.	311A , 311B
<b>Satisfaction of charge on company property</b>	You don't have to notify us when a charge is satisfied, but it may be in your interest to do so.	312
<b>Change of company name</b>	If the company changes its name, you must tell us within 14 days after the resolution was passed. (New names are subject to availability criteria.)	205
<b>Issue of new shares</b>	If you issue new shares, you must tell us within 28 days from the date of issue.	484
<b>Change to members (shareholders)</b>	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.	484
<b>Changes to holding company</b>	Proprietary companies must advise us within 28 days of changes to their ultimate holding company.	484
<b>Division or conversion of shares</b>	If you divide or convert shares into different classes, you must tell us within 14 days from the date of the change.	211
<b>Negative solvency</b>	You must notify us of a negative solvency resolution	485

<b>resolution</b>	within 7 days of the resolution.	
<b>Solvency resolution not passed</b>	If no solvency resolution is passed within 2 months of the review date you must notify us within 7 days after that period.	485
<b>Change of company review date</b>	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.	488

## How do you get the information to us?

If you are a director or secretary of a company you can tell us about most changes to your company's details using our [online service](#).

Alternatively, if you lodge documents on behalf of a number of companies, you can lodge them electronically using our [EDGE](#) service which uses compliant software. We have a [list of software products](#) registered by ASIC.

Lodging electronically you will:

- [save time](#)
- [have your information processed immediately and](#)
- [quickly meet your legal obligations.](#)

You may also lodge the changes on a paper form. These forms can be [downloaded from our website](#) or obtained by calling us on 1300 300 630 or visiting an [ASIC Service Centre](#) or an [ASIC Local Representative](#). Single or bulk forms are also available from some law stationers.

If you use a lot of forms, interactive software is available, such as '[ASIC Forms on CD-ROM](#)'.

We also list the [fees you must pay for lodging some forms](#).

Send the correct form and fee to:

Australian Securities & Investments Commission (ASIC)  
PO Box 4000  
Gippsland Mail Centre VIC 3841

## What if your company can't pay its debts?

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.

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. Your personal assets—not just your company's—may be at risk.

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
- legal action taken, or threatened, by trade suppliers or other creditors over money owed to them.

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.

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.

### How do you close down your company?

You can apply to have the company deregistered if certain conditions are met, using [Form 6010 Application for voluntary deregistration of a company](#).

The main conditions are that the company:

- is not carrying on business
- has assets of less than \$1000
- has paid all its fees and penalties under the Corporations Act
- has no outstanding liabilities
- is not a party to any legal proceedings, and
- all its members have agreed to the deregistration.

If these conditions are not met, the process is more complex and you'll need the help of a professional adviser.

### What can you find out about other companies?

See our information sheet [INFO 26 Don't get burned](#) for tips on avoiding shonky operators and fly-by-night companies.

You can find out more about a company you are dealing with by checking its identity to make sure that it really exists. You can [check its status and see what forms it has lodged](#).

Tell us if you think another company is trading while it can't pay its debts. We may not be able to investigate everything, but we do keep detailed records of all complaints and may take action if we have evidence of serious wrongdoing. Tell us if you think that a company director is acting dishonestly.

## A final word and to find out more

Finally, you are unlikely to get into trouble if you:

- are honest and careful in dealing with the company and on its behalf with others
- understand your legal obligations and make compliance with them part of your business
- keep informed about your company's financial position and performance
- get professional advice or more information when you are in doubt, and
- give the interests of the company, its shareholders and its creditors top priority.

▶ [More about running your company](#)

▶ [Copies of information sheets](#)

This is general information about the law and how we interpret it. You must decide whether what we say applies to you at your own risk. In most cases you'll need a qualified professional adviser to take your particular circumstances into account and tell you how the law applies to you.

This is **Information Sheet 79 (INFO 79)**. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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