

Checklist to establish a Public Company Limited by Guarantee

Overview

This checklist sets out the steps to set up ('incorporate') a public company limited by guarantee.

A company limited by guarantee is a company formed on the principle of having the liability of its members limited to the respective amounts the members undertake to contribute to the property of the company if it is wound up. Each member agrees to contribute a specific amount (usually a nominal sum of \$10-\$100) if the company is wound up and there is a shortfall of assets to pay creditors. This guarantee continues while the member remains a member and, if the current members cannot satisfy the shortfall, for one year after ceasing to be a member (but only for debts incurred up to the time when membership ceased).

Depending on the category of Not-For-Profit company, the company may be required to meet statutory financial reporting requirements involving the preparation of an annual financial report and a directors' report, audit of the annual financial report, lodging the audited reports with ASIC and laying them before the AGM.

The government body responsible for regulating companies limited by guarantee is the Australian Securities and Investments Commission (**ASIC**).

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No.	Item	Action	Comments
1.	Check availability of name of Company	Search ASIC Register – Business Names Search IP Australia Trade Mark Register <i>Seek further legal advice, if required.</i>	Check to confirm whether your proposed name is identical or similar to another name already registered. There are certain words and phrases that are restricted (Corporations Act s147).
2.	"Limited" in proposed name	Decide whether the name of the company will include the word "Limited"	A limited public company must have the word "Limited" at the end of its name unless its constitution: <ul style="list-style-type: none"> requires the company to pursue charitable purposes only and to apply its income promoting those purpose, and prohibits the company making distributions to its members and paying fees to its directors, and requires the directors to approve all other payments the company make to directors (ss 150 or 151 Corporations Act).

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3.	Reservation of proposed name of Company	ASIC Form 410 + prescribed fee	The initial reservation is for 2 months. This may be extended for 2 further periods of 2 months by lodging another ASIC Form 410 before the previous reservation expires. The second extension usually requires a reason for the delay to be given.
4.	Constitution	Decide how the company will be internally governed. Draft proposed Constitution <i>Seek legal assistance in drafting constitution.</i>	The internal governance may operate under the replaceable rules, its own constitution or a combination of both. A table of the basic rules for internally managing a company is set out in s141 Corporations Act.
5.	Consents of proposed officers of Company	Obtain written consents to act and personal details of initial directors and secretaries (Corporations Act ss201D, 204C and 205B). <i>Seek legal assistance in drafting consent forms, if required.</i>	The consent usually includes disclosures of interest in accordance with Corporations Act Div2, part 2D.) The company must have a minimum of 3 directors, one of who must reside in Australia (s201A Corporations Act). There must be at least one secretary resident in Australia (s204A Corporations Act). Keep a record of the consents – you do not need to lodge the consents with the registration application but will need keep with company's records.
6.	Members	Identify the initial member/s	A limited public company must have at least one member.
7.	Adopt Constitution	Initial member/s sign the Constitution	Each member agrees to the provisions of the constitution and to pay the amount undertaken to contribute to the property of the company if it is wound up. Keep a record of the agreements – you do not need to lodged the agreements with the registration application but will need keep with company's records.
8.	Office address	Identify address of registered office and principal place of business (ss142-146 Corporations Act).	The address must be in Australia.

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9.	Occupier's consent (if required)	Obtain occupier's written consent if the company will not occupy the premises at the registered office (s143 Corporations Act).	
10.	TCC and DGR	Seek pre-endorsement advice if the company is to be a TCC and/or DGR.	It may be appropriate to apply to the ATO for pre-endorsement advice that the company will be eligible for endorsement as a TCC when incorporate. This may be done by application in a letter with a copy of the proposed constitution sent to: Australian Taxation Office Non-profit Centre PO Box 300 Penrith NSW 2740
11.	Exemptions and concessions	Seek advice in principle.	
12.	Incorporation	After receiving pre-endorsement approvals in principle, apply for incorporation, ASIC Form 201 + prescribed fee. A copy of the company's constitution must be lodged with the form.	The form may be lodged directly with ASIC or mailed to: Australian Securities and Investments Commission PO Box 4000 Gippsland Mail Centre Vic 3841
13.	Section 150 company	Apply to ASIC for approval to be a section 150 company by lodging an ASIC Form 432.	
14.	Registration	After receipt of application ASIC will: <ul style="list-style-type: none"> • give the company an Australian Company Name (ACN) • register the company; • issue a Certificate of Registration. 	Within 2 days of registration ASIC will issue an 8 digit number associated with the company's ACN (known as the 'corporate key'). The corporate key is used to register and view the company records, lodge forms and receive annual statements online.

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15.	Special purpose company	If applicable, check box on ASIC Form 201 to indicate 'special purpose company', alternatively apply to ASIC by lodging an ASIC Form 484B.	
16.	Auditor	Obtain written consent of auditor.	The directors of the company must appoint an auditor within 1 month after the day the company is registered, unless the company in general meeting appoints an auditor. The auditor appointed by the directors holds office until the first AGM (s327A Corporations Act).
17.	Company name	The Company's name must be displayed prominently at every place at which the company carries on business that is open to the public.	
18.	First directors' meeting to: <ul style="list-style-type: none"> • table incorporation documentation • open bank accounts • appoint auditor • apply for ABN • decide financial year (s323D Corporations Act) 	Convene meeting in accordance with company's constitution. <i>Seek legal assistance on drafting minutes of first directors meeting, if required.</i>	
19.	ABN and tax endorsements	Apply for ABN and other TCC and DGR endorsements. ABN application form – ATO On receipt of relevant application forms from ATO, apply for endorsement as a TCC and DGR. Lodge form with copies of Constitution and pre-endorsement advice letter.	

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20.	Bank accounts	Open bank accounts as per directors' resolution	
21.	Insurance policies	Take out relevant insurance policies	
22.	Company records and register	Maintain a register of members. Keep a record of all directors' and members; meeting minutes and resolutions	
23.	First AGM	Convene and hold the first AGM in accordance with company's constitution and Corporations Act.	The first AGM must be held within 18 months after registration and thereafter at least once in each calendar year and within 5 months after the end of its financial year (s250N Corporations Act).

The information contained in this checklist is intended as a guide only, and is not legal advice. If you or your organisation has a specific legal issue, please seek legal advice before making a decision about what to do.