

Procedures Guide for Company Secretaries

Introduction

The directors of a company bear the ultimate responsibility for compliance with and discharge of all matters of administration that relate to a company. These tasks are usually delegated by the board of directors to the company secretary. Nowadays the role of the company secretary is optional for a proprietary company. As such, all references in this Guide to “company secretary” should be read as a reference to “director” where no company secretary has been appointed.

The company secretary must have a thorough knowledge of:

- the company
- its operations
- its constitution
- its reporting obligations to the Australian Securities and Investments Commission (“ASIC”)
- the company’s members
- the laws which regulate the company’s operations.

Today, a company secretary has an increasingly important role in the area of corporate governance and must therefore be pro-active in satisfying his/her duties and responsibilities under the *Corporations Act 2001* (Cth) (“the Corporations Act”).

This *Procedures Guide for Company Secretaries* (“Guide”) has been prepared as a short and practical guide in respect of the appointment, resignation or removal of key officers and the main duties and responsibilities of a company secretary of a proprietary company under the Corporations Act that apply.

It ought to be noted that this Guide is a general guide only and is not intended to be a substitute for legal advice. Further, the information contained in this Guide will be subject to a company’s constitution, the provisions of the Corporations Act that apply to the company as “replaceable rules”, or a combination of both. In this regard, it ought to be noted that for a proprietary company, the replaceable rules set out in the Corporations Act may be modified or displaced by a company’s constitution. The information may also be subject to any shareholders’ agreement which may have been entered into by a company’s shareholders.

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1 Appointment and resignation, retirement or removal of officers

1.1 Company secretary

Appointment

A proprietary company is not required to have a company secretary. However, if one or more company secretaries is appointed, at least one of them must ordinarily reside in Australia. Further, a company secretary must be:

- a natural person
- at least 18 years of age.

A person who has been disqualified from managing a corporation may only be appointed as a company secretary if the appointment is made with the permission of ASIC or by leave of the court, depending upon which body disqualified the person.

On registration of a company, a person who is specified in the application with their consent as a proposed company secretary, will become company secretary without further appointment.

The procedures for the appointment of a secretary (other than a person who acts as secretary upon incorporation of the company) are as set out below.

Action/Notice	Comments
1 New secretary to provide signed consent to act as secretary	<p>A consent to act as secretary of a company must be:</p> <ul style="list-style-type: none">• signed and dated by the new secretary• delivered to the company prior to the secretary's appointment by the directors• kept with the company's records. <p>A person may be both a director and secretary of a company.</p>
2 Appointment by the director(s)	<p>Having received the signed consent to act as secretary of the company, the director(s) resolve to appoint a person as company secretary.</p> <p>The resolution appointing the company secretary must be signed and placed in the company's minute books within 1 month after the resolution is passed.</p>
3 ASIC notification	<p>An ASIC Form 484 "Change to Company Details" must be lodged with ASIC within 28 days of the appointment.</p>
4 Notify relevant bank if the secretary is to be appointed as a signatory or co-signatory of company bank accounts.	<p>If the company secretary is appointed as a signatory or co-signatory in respect of the company's bank accounts, the relevant bank must be notified and the bank's procedures in respect of such appointment must be complied with.</p>

Resignation or retirement of secretary

If the procedure for the resignation or retirement of the company secretary is set out in the company's constitution, such procedure must be followed. If the company's constitution does not set out the procedure to be followed, then the procedure for the resignation or retirement of the secretary is as set out below.

Action/Notice	Comments
1 Written notice of the secretary to the company	<p>A secretary may resign by written notice to the company. Often, the notice given includes a statement that the resigning or retiring secretary does not have any claims against the company.</p> <p>A secretary who resigns or retires may give ASIC written notice of his/her resignation or retirement by lodging an ASIC Form 370 "Notification by Officeholder of Resignation or Retirement" together with his/her notice of resignation/retirement, although this is not a specific requirement.</p>
2 ASIC notification	<p>An ASIC Form 484 "Change to Company Details" must be lodged by the company with ASIC within 28 days of the resignation or retirement. It ought to be noted that the lodgement of an ASIC Form 370 does not abrogate the company's responsibility to lodge an ASIC Form 484.</p>
3 Notify relevant bank (if applicable)	<p>If the resigning or retiring company secretary was appointed as a signatory or co-signatory in respect of the company's bank accounts, the relevant bank must be notified and the bank's procedures in respect of the cessation of such appointment must be complied with.</p>

Removal of secretary

If no procedure is set out in the company's constitution for the removal of the secretary, then the procedure to be followed is set out below.

Action/Notice	Comments
1 Removal by the director(s)	<p>The director(s) of the company may resolve to remove the company secretary.</p> <p>The resolution of the director(s) removing the company secretary must be signed and placed in the company's minute books within 1 month after the resolution is passed.</p>
2 ASIC notification	<p>An ASIC Form 484 "Change to Company Details" must be lodged with ASIC within 28 days of the removal of the company secretary.</p>
3 Notify relevant bank (if applicable)	<p>If the company secretary removed by the director(s) was appointed as a signatory or co-signatory in respect of the company's bank accounts, the relevant bank must be notified and the bank's procedures in respect of the cessation of such appointment must be complied with.</p>

1.2 Director

A proprietary company must have at least one director and at least one director must ordinarily reside in Australia. The Corporations Act provides the director must be:

- an individual of at least 18 years of age
- not be disqualified from managing corporations unless the ASIC or the court, depending upon which body disqualified the person, grant permission.

Set out below are the procedures to be followed for the appointment, resignation, retirement or removal of a director.

Appointment of director

On registration of a company, a person, who, with their consent, is specified in the application as a proposed director will become a director of the company without further appointment.

The procedures for the appointment of a new director (after the registration of the company) are as set out below.

Action/Notice	Comments
1 New director to provide signed consent to act as director	<p>A consent to act as director of the company must be:</p> <ul style="list-style-type: none"> • signed and dated by the new director • delivered to the company • kept with the company's records.
2 Check procedures in the constitution and any shareholders' agreement – however appointment is usually by the director(s)	<p>Appointment is in accordance with the requirements of the company's constitution and any shareholders agreement which is in place.</p> <p>The appointment of a new director may be made by the member(s) or by the director(s). Usually, the director(s) of the company resolve to appoint a new director having received the proposed director's signed consent to act as director.</p> <p>The director of a proprietary company who is the company's only director and only shareholder may appoint another director by recording the appointment and signing the record.</p> <p>The resolution of the director(s) appointing a director must be signed and placed in the company's minute books within 1 month after the resolution is passed.</p> <p>If the replaceable rules in the Corporations Act are not displaced by the company's constitution, and the director(s) appoint(s) another director pursuant to the provisions of the replaceable rules, then that appointment must be confirmed by resolution of the company within 2 months, after the appointment is made, otherwise the person ceases to be a director at the end of that 2 months. Such resolution must be also signed and placed in the company's minute books within 1 month after the resolution is passed.</p>
3 ASIC notification	An ASIC Form 484 "Change to Company Details" must be lodged with ASIC within 28 days of the appointment.
4 Notify relevant bank if director to be a signatory or co-signatory to company bank accounts.	If the director is to also be appointed as a signatory or co-signatory in respect of the company's bank accounts, the relevant bank must be notified and the bank's procedures in respect of such appointment must be complied with.

Resignation or retirement of director

Action/Notice	Comments
1 Check procedure in the company's constitution – however, resignation or retirement is usually by written notice by the director to the company	<p>Resignation or retirement ought to be in accordance with the requirements of the constitution and may also be subject to the requirements of any shareholders' agreement which may be in effect.</p> <p>Generally, written notice of the director's resignation:</p> <ul style="list-style-type: none"> • is signed and dated by the resigning/retiring director • is delivered to the company's registered office • states that the resigning/retiring director does not have any claims against the company. <p>A director who resigns may give ASIC written notice of his/her resignation or retirement by lodging an ASIC Form 370 "Notification by officeholder of resignation or retirement" together with his/her notice of resignation.</p>
2 ASIC notification	An ASIC Form 484 "Change to Company Details" must be lodged by the company with ASIC within 28 days of the resignation or retirement. It ought to be noted that the lodgement of an ASIC Form 370 does not abrogate the company's responsibility to lodge an ASIC Form 484.
3 Notify relevant bank if director to be removed as a signatory or co-signatory of company bank accounts.	If the resigning or retiring company secretary was appointed as a signatory or co-signatory in respect of the company's bank accounts, the relevant bank must be notified and the bank's procedures in respect of the cessation of such appointment must be complied with.

Removal of director

Action/Notice	Comments
1 Check procedures in the company's constitution and any relevant shareholders' agreement – however, removal is usually by the director(s) or member(s)	<p>The removal of a director may be by resolution passed at a meeting of the member(s) or, if approved by the constitution, by director(s).</p> <p>The resolution to remove a director must be signed and placed in the company's minute books within 1 month after the resolution is passed.</p>
2 ASIC notification	An ASIC Form 484 "Change to Company Details" must be lodged with ASIC within 28 days of the removal. 3. Notify relevant bank if director to be removed as a signatory or co-signatory of company bank accounts
3 Notify relevant bank if director to be removed as a signatory or co-signatory of company bank accounts	If the removed director was appointed as a signatory or co-signatory in respect of the company's bank accounts, the relevant bank must be notified and the bank's procedures in respect of the cessation of such appointment must be complied with.

1.3 Public officer

Every company which carries on business in Australia or derives in Australia income from property must ensure that it appoints a “public officer” in relation to all the company’s obligations under the *Income Tax Assessment Act* (Cth) and associated regulations.

Action/Notice	Comments
1 Appoint Public Officer	<p>A consent to act as public officer of the company ought to:</p> <ul style="list-style-type: none"> state the name of the new public officer state the company name and address for service of notices be signed and dated by the public officer be kept with the company’s records. <p>The public officer of the company must be:</p> <ul style="list-style-type: none"> a natural person at least 18 years old ordinarily resident in Australia capable of understanding the nature of the person’s appointment as the public officer of the company.
2 Notify Commissioner of Taxation of the appointment of, or any change in, the company’s Public Officer	Notification to the Commissioner of Taxation is made by forwarding a copy of the consent to act as public officer to the Commissioner as soon as possible after the appointment.

1.4 Company auditors

Auditors – An Introduction

The following entities are, unless granted relief from ASIC, required to prepare an annual financial report which must be audited:

- all public companies
- all large proprietary companies
- small proprietary companies which are controlled by foreign entities.

All companies that are required to prepare a financial report must appoint an auditor to audit that report.

A proprietary company is considered to be a large proprietary company if it satisfies two out of the three following criteria:

- the consolidated revenue for the financial year of the company and any entities it controls is \$25 million
- the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is \$12.5 million
- the company and any entities it controls have 50 or more employees at the end of the financial year.

If a proprietary company does not satisfy two out of the above three criteria it is regarded as a small proprietary company.

If a proprietary company satisfies the above criteria and is therefore considered to be a large proprietary company, that company has greater reporting requirements and is required to appoint an auditor.

Appointment and resignation, retirement or removal of officers

As small proprietary companies are only required to prepare financial reports in limited circumstances, a small proprietary company only needs to have an auditor appointed in circumstances where the company is required to prepare financial reports.

If an auditor is to be appointed, set out below are the procedures for the auditor's:

- appointment
- resignation or retirement
- removal.

Appointment of auditor

Action/Notice	Comments
1 Consent to act	<p>The appointment of an auditor and the auditor appointed must satisfy the requirements (including those regarding (registration requirements and independence) set out in Divisions 1, 2 and 3 of Part 2M.4 of the Corporations Act.</p> <p>An individual, firm or company is not to be appointed as auditor unless the individual, firm or company has, prior to the appointment, provided to the director/s of the company:</p> <ul style="list-style-type: none">• written consent to act as auditor• such consent has not been withdrawn before the appointment is made. <p>A consent to act as auditor given by a firm must be signed by a member of the firm (who is a registered company auditor) both in his or her own name and in the name of the firm.</p> <p>A consent to act as auditor given by a company must be signed by a director or senior manager of the company both in his or her own name and in the name of the company.</p>
2 Nomination/Appointment	<p>A company is not entitled to appoint an individual, a firm or a company as auditor at the company's Annual General Meeting ("AGM") unless notice in writing of the nomination as auditor was given to the company by a member of the company:</p> <ul style="list-style-type: none">• before the meeting was convened• not less than 21 days before the meeting. <p>The above requirement for 21 days' notice of nomination does not apply where the auditor is to be appointed to replace an auditor removed at the meeting.¹</p>

¹ For further details regarding the removal of an auditor refer to "Removal of auditor at members' meeting" below.

Action/Notice	Comments
	<p>It ought to be noted that the Corporations Act does not require a proprietary company to hold an AGM. If the proprietary company's constitution does not require the holding of an AGM, the company may appoint its auditor at a general meeting, provided that other requirements of the Corporations Act in relation to the appointment of an auditor (including, but not limited to, the notice requirements mentioned above) have been complied with. Alternatively, the director/s may appoint an auditor if one has not been appointed by the company in a general meeting.</p> <p>On receipt of the notice of nomination of an individual, a firm or a company for appointment as auditor of a company, the company must:</p> <ul style="list-style-type: none"> • not less than 7 days before the meeting • at the time the notice of the meeting is given. <p>send a copy of the notice to:</p> <ul style="list-style-type: none"> • each person entitled to receive notice of general meetings of the company • each existing auditor of the company • each person nominated as auditor. <p>A notice to be given to an audit firm may be given to the firm by giving the notice to a member of the firm.</p>
<p>3 Prepare minutes and place in minute book</p>	<p>The resolution of the members in general meeting or the board of directors of the company appointing the auditor must be placed on the company's minute book within 1 month of the passing of the resolution.</p>

Resignation or retirement of auditor

Notice/Action	Comments
<p>1 Receive written notice of resignation</p>	<p>An auditor may resign by written notice to a company if:</p> <ul style="list-style-type: none"> • the auditor has applied to ASIC for consent to the resignation • ASIC has granted consent to resignation. <p>Subject to satisfaction of the above, the resignation takes effect on the date:</p> <ul style="list-style-type: none"> • if any, specified by the auditor for the purpose of resignation in the resignation notice • on which ASIC gives its consent to the resignation • the notice is received by the company, <p>whichever is the later.</p>
<p>2 ASIC Notification</p>	<p>An ASIC Form 315 "<i>Notification of resignation, removal or cessation of auditor</i>" must be lodged with ASIC within 14 days of the company receiving the resignation notice. If ASIC Form 315 is not lodged within 14 days, late penalties may apply on lodgement.</p>

Removal of auditor

Notice/Action	Comments
1 Notice of intention to remove an auditor must be given to the company at least 2 months before a general meeting to decide the issue is held	If a company calls a meeting after a notice of intention to remove an auditor is given, the company may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
2 Auditor and ASIC notification	<p>Where a notice of intention to remove an auditor is received by a company, the company must, as soon as possible following receipt of the notice, send a copy of the notice to the auditor and lodge a copy with ASIC.</p> <p>Within 7 days after receiving a copy of the notice of intention to remove the auditor, the auditor may make representations in writing to the company.</p> <p>After receiving the representations, the company must, if it is requested to do so by the auditor, send a copy of such representations to every company, unless ASIC, on the application of the company orders otherwise.</p>
3 Members' meeting held to resolve issue of whether to remove auditor	<p>The company secretary must ensure that:</p> <ul style="list-style-type: none"> • 21 days notice of the members' meeting is given • the meeting is held in accordance with the procedures set out in the company's constitution (in this case, a resolution without a meeting or short notice of the meeting are not permitted).
4 Appointment of new auditor at members' meeting to replace an auditor removed at the meeting	<p>If an auditor is removed from office at a general meeting:</p> <ul style="list-style-type: none"> • the company may, at that meeting, by passing a special resolution, immediately appoint a new auditor provided a copy of the notice of nomination has been sent to the proposed new auditor not less than 7 days before the meeting or at the time the notice of meeting is given • if such resolution is not passed or could not be passed merely because a copy of the notice of nomination as auditor has not been sent to the proposed new auditor, the meeting may be adjourned to a day not earlier than 20 days, and not later than 30 days after the day of the original meeting. At the adjourned meeting, an auditor may be appointed by ordinary resolution only if the company has received notice of nomination of that auditor from a member of a company at least 14 clear days before the date of the adjourned meeting. <p>The newly appointed auditor may only hold an appointment made in accordance with the above until the next AGM.</p> <p>It ought to be noted that the Corporations Act does not require a proprietary company to hold an AGM. In addition to the above, if the company's constitution does not require the holding of an AGM, it is likely that the newly appointed auditor may only hold this appointment until the next general meeting of the company.</p>
5 Prepare minutes of members' meeting and place in minute book.	Minutes of the meetings held and resolutions passed are to be prepared and placed in the company's minute book within one month after a resolution is passed.
6 ASIC Notification	An ASIC Form 315 "Notification of resignation, removal or cessation of auditor" must be lodged with ASIC within 14 days of the removal. Failure to lodge an ASIC form 315 within the requisite period may result in the imposition of late penalties upon lodgement of the form.

2 *Duties of directors and secretaries*

For the purposes of the Corporations Act, both a director and a company secretary are “officers” of a company and as such, must comply with the statutory duties set out below.

Duty	Relevant Section of Corporations Act
1 Exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they: a were an officer of a corporation in the corporation’s circumstances b occupied the office held by, and had the same responsibilities within the corporation as the officer.	section 180(1)
2 Exercise their powers and discharge their duties: a in good faith in the best interests of the corporation b for a proper purpose.	section 181(1)
3 Not improperly use their position to: a gain an advantage for themselves or someone else b cause detriment to the corporation.	section 182(1)
4 Must not improperly use information obtained in a person’s position as officer to: a gain an advantage for themselves or someone else b cause detriment to the corporation.	section 183(1)

3 Responsibilities

3.1 Responsibilities – An introduction

A company secretary has a variety of responsibilities and obligations in fulfilling their role, including but not limited to responsibilities in respect of:

- the company registers
- ASIC notifications
- directors' and members meetings
- accounts
- annual company statements.

3.2 Registers

The company secretary is usually responsible for the establishment and maintenance of the company's registers. The Corporations Act requires that the following registers (together and severally referred to as "Register") be established:

- Register of Members
- Register of Debenture Holders (if the company issues debentures)
- Register of Option Holders and copies of option documents (if the company grants options over un-issued shares or interests)
- Register of Charges (if the assets or property of the company are subject to a charge or security).

Registers may be kept by:

- making entries in a bound book
- making entries in a looseleaf file
- storing entries on a computer, provided the information kept on computer is capable of being reproduced in written form at any time.

A company must maintain a separate file for each Register, although often a consolidated looseleaf file known as a "*Company Register*" is established.

A Company Register will usually be divided into a Register of members, debenture holders, option holders and charges. A Company Register may also contain sections for the placing of:

- directors' minutes
- members' minutes
- information in relation to directors and the secretary (eg. original consents to act as director/secretary, director's shareholdings etc)
- copies of ASIC Forms lodged.

Responsibilities

The company secretary has the following responsibilities with respect to the establishment and maintenance of the Registers:

Responsibility	Comments
1 Set up Registers (see below) and notify ASIC as to where each Register is kept	<p>The Registers of members, debenture holders and option holders must be kept at one of the following offices which must be located in Australia:</p> <ul style="list-style-type: none">• the company's registered office• the office of the company's principal place of business• place where work involved in maintaining the Register is done (for example the company's solicitor or accountant's office)• another place approved by ASIC. <p>If the Register is not kept at the company's registered office or the principal place of business or the location of the Register is changed (other than between the company's registered office and the principal place of business), an ASIC Form 909 "<i>Notification of office at which register is kept</i>" must be lodged within 7 days of establishing or changing the location of Registers.</p>
2 Establish and update the Register of Members	<p>The Register of Members must contain the following information in respect of each of the company's members:</p> <ul style="list-style-type: none">• name and address of the member• date on which the name of the member was entered in the Register as a member• date of every allotment of shares and the number of shares in each allotment• number and class of shares held by the member• share numbers or share certificate numbers of the shares (if any)• the amount paid on the shares• whether or not the shares are fully paid• the amount unpaid on the shares (if any). <p>The Register of Members must show the shares a member does not hold beneficially (that is, the shares held by a member on trust for another person or entity).</p> <p>Transfers of shares must be entered in the Register of Members in accordance with the procedures set out in company's constitution or the replaceable rules set out in the Corporations Act, whichever applies.</p> <p>The Register of Members must also show the:</p> <ul style="list-style-type: none">• date• name• details of persons or entities who ceased to be members of the company during the previous 7 years• date on which such persons or entities ceased to be a member. <p>The entries referred to above may be kept separate from the rest of the Register of Members.</p> <p>A company with more than 50 members must keep an index of the names of the members unless the Register is in a form that operates effectively as an index.</p>

Responsibility	Comments
3 Establish and update Register of Debenture Holders	<p>The Register of Debenture Holders must be established as soon as debentures in a company are issued and must contain the:</p> <ul style="list-style-type: none"> • name and address of debenture holders • amount of debentures held by the holder.
4 Establish and update Register of Option Holders and copies of options documents	<p>The Register of Option Holders must be updated within 14 days after the grant of an option.</p> <p>The company must keep with the Register of Option Holders a copy of each document granting the option</p> <p>If the company receives written notice of the transfer of an option, the Register must be updated to reflect the transfer of the option.</p> <p>The Register must contain the following information:</p> <ul style="list-style-type: none"> • name and address of each option holder • date on which the name of each person or entity was entered in the Register as a holder • date the option was granted • number and description of shares over which the option was granted • the period during which, or the time at which, the option(s) may be exercised • any event that must happen before the option(s) may be exercised • any consideration for the grant of an option • any consideration for the exercise of the option(s) (or method by which consideration is determined). <p>Options must also be disclosed in the annual directors' report.</p>
5 Establish and update Register of Charges ²	<p>The Register of Charges must contain details of:</p> <ul style="list-style-type: none"> • the creation of a charge on the assets or property of the company • an acquisition by the company of assets or property already subject to a charge • on the discharge of a charge. <p>The Register of Charges must contain the following information:</p> <ul style="list-style-type: none"> • the date the charge was created by the company (or the date the assets or property subject to the charge was acquired) • a short description of the liability secured • a short description of the assets or property charged • the name of the trustee for debenture holders or the chargee (if any) • the name of the person or entity whom the company believes to be the holder of the charge. <p>The company (through the company secretary) must also ascertain whether ASIC Forms 309, 311, 350 or 312 are required to be lodged.³</p>

² The establishment and updating of the Register of Charges is only relevant if the company grants a charge over the company's assets or property.

³ For details, refer to section 3.2 "ASIC Notifications" below.

Responsibility	Comments
<p>6 Make Registers available for inspection</p>	<p>The following may inspect a Register free of charge:</p> <ul style="list-style-type: none"> • an option or debenture holder (in relation to the Registers of Members, Option Holders and Debenture Holders) • a creditor of the company (in relation to the Register of Charges) • any member of the company. <p>Whilst other persons or entities may be entitled to inspect a Register, they may be required to pay a fee.</p> <p>If the person or entity inspecting a Register asks for a copy and pays any fee required by the company, the company must provide a copy of the Register (or part of the Register) within 7 days (in relation to the Registers of Members, Option Holders and Debenture Holders) or 21 days (in relation to the Register of Charges).</p> <p>Information about a person obtained from the Register of Members, Option or Debenture Holders may not be used or disclosed for the purposes of contacting or sending information to a person unless the information is relevant to the securities they hold or the use or disclosure is approved by the company.</p>

3.3 ASIC notifications

The company secretary has a responsibility to ensure that the company notifies ASIC of changes affecting the company within the time period prescribed by ASIC for particular notifications. A failure to notify ASIC within the prescribed period(s) may result in the imposition of late lodgement fees.

In making a notification to ASIC, the following documentation may be required for lodgement with ASIC as part of the notification process:

- a completed and signed ASIC Form, the form of which is prescribed by ASIC
- such supporting documentation as may be prescribed in the ASIC Form or as may be subsequently requisitioned by ASIC.

Set out below are some of the common changes which must be notified to ASIC, and the name and number of the relevant ASIC Form that must be lodged to notify those changes. Details of any supporting documentation that may be required by ASIC are not referred to below and reference ought to be made to the applicable ASIC Form for the details of any such documentation. The list set out below is not exhaustive and a company secretary ought to seek advice as to whether ASIC requires notification of any other changes affecting the company.

Change/Notification	Comments
<p>1 Appointment, resignation, retirement or removal of a director or secretary</p>	<p>An ASIC Form 484 “<i>Change to Company Details</i>” must be lodged within 28 days of the change.</p>
<p>2 Change in the name or address of a current director or secretary</p>	<p>An ASIC Form 484 “<i>Change to Company Details</i>” must be lodged within 28 days of the change.</p>
<p>3 Resignation, removal or cessation of auditor</p>	<p>The company must lodge with ASIC a copy of the notice of intention to remove an auditor.</p> <p>An ASIC Form 315 “<i>Notification of resignation, removal or cessation of auditor</i>” must be lodged within 14 days of the resignation, removal or cessation.</p>

Change/Notification	Comments
4 Change in company name	An ASIC Form 205 “ <i>Notification of Resolution</i> ” must be lodged within 14 days of the resolution.
5 Change in company type	An ASIC Form: <ul style="list-style-type: none"> • 205 “<i>Notification of resolution</i>” • 206 “<i>Application for change of company type</i>” must be lodged within 14 days of the resolution.
6 Location of Register	An ASIC Form 909 “ <i>Notification of office at which register is kept</i> ” must be lodged within 7 days of establishing or changing the location of a Register if a Register is kept somewhere other than the company’s registered office or principal place of business.
7 Change in registered office or principal place of business	An ASIC Form 484 “ <i>Change to Company Details</i> ” must be lodged within 28 days of the date of change.
8 Share issue, division, conversion, cancellation or buyback ⁴	<p>The ASIC form to be lodged varies depending on the action taken in respect of the company’s shares. The forms that apply are as follows:</p> <ul style="list-style-type: none"> • <i>share issue, cancellation and transfer</i>: An ASIC Form 484 “<i>Change to Company Details</i>” must be lodged within 28 days of the share issue, cancellation of shares, any changes to the share structure, any transfer of shares or any changes to the Register of Members. • <i>division or conversion</i>: An ASIC Form 211 “<i>Notification of division or conversion of a class of shares</i>” must be lodged within 14 days of the change occurring. An ASIC Form 2205B “<i>Notification of conversion of shares into larger or small numbers</i>” must also be lodged within 1 month after the relevant resolution was passed. • <i>share buy-back</i>: An ASIC Form 281 “<i>Notification of intention to carry out a share buyback</i>” must be lodged at least 14 days before: <ul style="list-style-type: none"> – if the buy-back is conditional on the passing of a resolution, the resolution is passed – if the buy-back is not conditional on the passing of a resolution, the agreement to buy-back the shares is entered into. An ASIC Form 280 “<i>Notification of share buy-back details</i>” and/or an ASIC Form 281 “<i>Notice of Intention to carry out a share buy-back</i>” may be also be required.

⁴ It ought to be noted that the issue, division, conversion or buy-back of shares is subject to the procedures set out in the Corporations Act and the company’s constitution.

Change/Notification	Comments
<p>9 A charge over the company's assets or property is created</p>	<p>An ASIC Form 309 "Notification of details of a charge" must be lodged within 45 days after the charge was created or the assets or property the subject of a charge was acquired.</p> <p>Whether the charge is subject to stamp duty must also be ascertained. If stamp duty is payable and an ASIC Form 350 "Certification of compliance with stamp duties law" has not been lodged, the charge will be "provisionally registered" with ASIC. The ASIC Form 350 must be lodged prior to the expiry date of the provisional registration of the charge. If stamp duty has not been paid and the Form 350 not lodged within the requisite time, ASIC will delete particulars of the charge from its register.</p> <p>If stamp duty has been paid, an ASIC Form 350 ought to be lodged as soon as the stamp duty is paid.</p>
<p>10 A charge over the company's assets or property is varied or the assets or property the subject of a charge is released</p>	<p>An ASIC Form 311 "Notification of assignment or change to details of a charge" must be lodged within 45 days from the date of an assignment or variation.</p> <p>An ASIC Form 312 "Notification of discharge or release of property from a charge" ought to be lodged when the:</p> <ul style="list-style-type: none"> • debt or other liability secured by the charge has been paid or discharged in whole or part • assets or property charged or part of those assets or property are released from the charge.

3.4 Directors' and members' meetings

A company secretary has a responsibility to organise directors' and members' meetings and ensure that all procedures for the convening and conduct of such meetings are in accordance with the company's constitution and the Corporations Act.

One of the secretary's most important responsibilities with respect to meetings is the responsibility to prepare minutes of the meeting ("**Minutes**") which accurately reflect the proceedings at a meeting, or if no meeting is held, the resolutions which were recorded.

The Minutes or resolutions recorded must be placed in the company's minute book within 1 month of the date the resolution was passed. The Minutes ought to record the:

- name and ACN of company
- date, time and place the meeting was held
- names of those present
- apologies (if any)
- any declarations of interest made by directors
- details of discussions
- whether an ordinary or special resolution is proposed at the meeting and the results of such resolutions
- signature of the chairperson and date of the minutes (or record of resolution).

Directors' meetings

The secretary has the following responsibilities with respect to a directors' meeting:

Responsibility	Comments
1 Notify all directors of a directors' meeting	Unless the company's constitution provides otherwise, reasonable notice of the meeting ought to be given to all directors.
2 Prepare agenda and brief directors	The secretary ought to: <ul style="list-style-type: none"> • prepare an agenda stating the resolutions proposed at the directors' meeting • brief directors on important matters concerning the company • provide directors with any information they require prior to the meeting.
3 Convene meeting	The company secretary may be invited to attend a directors' meeting and may also be requested to brief the directors as to matters concerning the company. The procedures for the conduct of directors' meetings are set out in the company's constitution or, if not in the company's constitution, the Replaceable Rules set out in the Corporations Act. The company secretary ought to draw the attention of the board of directors to any departure from what is regarded as good governance.
4 Prepare Minutes and place Minutes in the minute book	As indicated above, Minutes of meetings must be placed in the company's minute book within 1 month of the meeting.
5 Resolutions and declarations without meetings	Subject to a company's constitution, the directors of a company may pass a resolution without a directors' meeting if all the directors entitled to vote on the resolution sign a document known as a " <i>circular resolution</i> " containing a statement that they are in favour of the resolution set out in the document. Separate copies of the circular resolution may be used for signing by the directors provided the wording of the resolution and statement are identical in each copy. The resolution is passed when the last director signs the circular resolution. The director of a proprietary company that has only one director may pass a resolution by that director recording the resolution, signing and dating the record of resolution. The director of a proprietary company that has only one director may make a declaration (eg in relation to company accounts) by the director recording the declaration and signing and dating the record. Recording and signing the declaration satisfies any requirement in the Corporations Act that the declaration be made at a directors' meeting.

Members' meetings

The secretary has the following responsibilities with respect to a members' meeting:

Responsibility	Comments
1 Directors' meeting resolving to convene a members' meeting	The secretary must place Minutes of a directors' meeting resolving to convene a members' meeting in the company's minute book within 1 month of the resolution being passed.
2 Prepare and send "Notice of members' meeting"	<p>Except in certain circumstances, at least 21 days written notice must be given of a meeting of the company's members. The day of giving the notice and the day of the meeting are not included in the 21 day period.</p> <p>The company's constitution ought to be checked to confirm whether there are any other requirements concerning the calling or conduct of members' meetings.</p> <p>A Notice of Members' Meeting must be sent to:</p> <ul style="list-style-type: none"> • each member entitled to vote at the meeting • each director • the company's auditor (if one is appointed).
3 Attend members' meeting	The secretary must ensure that all procedures for the conduct of the meeting are in compliance with the company's constitution.
4 Prepare minutes and place in the minute book	<p>The minutes of members' meetings ought to state whether the resolution(s) passed were "ordinary" or "special" resolutions.</p> <p>An "<i>ordinary resolution</i>" only requires a simple majority of those present and voting at a meeting to vote in favour of the resolution.</p> <p>A "<i>special resolution</i>" generally requires that the resolution is passed by a 75% majority of members who are present at the meeting and who are entitled to vote.</p> <p>Resolutions may be passed without holding a meeting if all members sign a document known as a "<i>circular resolution</i>" containing a statement that they are in favour of the resolution. Separate copies of the circular resolution may be used for signing by members if the wording of the resolution and statement are identical in each copy. This does not apply to a resolution for the removal of the company's auditor.</p> <p>A company with only one member may pass resolutions without holding a meeting by the member recording and signing a resolution.</p> <p>Minutes of members' meetings are to be placed in the company's minute book within 1 month of the passing of a resolution.</p>

Responsibility	Comments
5 Check whether ASIC notification is required	<p>An ASIC Form 205 “<i>Notification of resolution</i>” (in respect of a variety of resolutions) must be lodged within 14 days of the resolution being passed. If the resolution relates to the voluntary winding up of the company it must be lodged within 7 days of the resolution being passed.</p> <p>An ASIC Form 2205 “<i>Notification of resolutions regarding shares</i>” must be lodged if the resolution relates to share capital or financial assistance by a company for acquiring shares in a company or holding company. The lodging period for ASIC Form 2205 depends on the type of resolution passed. ASIC Forms 2601 and 2602 are also to be lodged in respect of the giving of financial assistance.</p> <p>If a special resolution is passed approving the transfer of the place of registration of a company to another jurisdiction, a copy of the special resolution must be lodged with ASIC within 14 days of the day the resolution was passed.</p>
6 Check whether member notification is required	<p>If a resolution is passed which varies or cancels the rights attached to shares in a class of shares, written notice of the variation or cancellation must be sent to members within 7 days after the variation or cancellation is made.</p>

3.5 Accounts

A proprietary company’s responsibility with respect to its accounting obligations will depend on whether the company is classified as a “small proprietary company” or a “large proprietary company” under the Corporations Act.

A proprietary company is a “large proprietary company” if any two of the following apply:

- the consolidated gross operating revenue for the financial year of the company and any entities it controls (if any) is \$25 million or more
- the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls (if any) is \$12.5 million or more
- the company and any entities it controls (if any) have 50 or more employees at the end of the financial year.

If a proprietary company does not satisfy two of the above criteria, the company will be regarded as a “small proprietary company”.

Although the Corporations Act may not require a small proprietary company to prepare a financial report except in certain circumstances, for the purposes of other laws (for example, taxation laws), and to ensure that the company adopts good business practices, it is advisable for the company to prepare an annual financial report so that it can monitor and better manage its financial position.

Responsibilities

The company secretary has a responsibility to ensure that the company's accounting records are maintained and distributed in accordance with the Corporations Act. Set out below is a table summarising the company's main accounting obligations:

Obligation	Comments
1 Ensure that the company keeps financial records	<p>The financial records maintained in respect of the company must:</p> <ul style="list-style-type: none">• correctly record and explain the company's transactions, financial position and performance• enable true and fair financial statements to be prepared and audited. <p>The financial records of a company must be kept for a period of 7 years after the transactions the subject of the records are completed.</p>
2 Arrange the preparation of a financial report and directors' report (if required)	<p>A large proprietary company must prepare a financial report and a directors' report each financial year.</p> <p>A small proprietary company only has to prepare a financial report and a directors' report if:</p> <ul style="list-style-type: none">• ASIC or members holding 5% or more of the company's issued shares direct the company to do so• the company is controlled by a foreign company and is not consolidated in financial statements for that year lodged with ASIC.
3 Arrange the preparation of a financial report	<p>A financial report for a year consists of the:</p> <ul style="list-style-type: none">• financial statements for the year of the company, and, if required by the accounting standards, the consolidated financial statements• notes to the financial statements• directors' declaration about the financial statement and notes. <p>A company's financial report must be prepared in accordance with the Corporations Act and the accounting standards. A financial report for a small proprietary company does not have to comply with accounting standards if prepared in response to a shareholder direction that does not require compliance with the accounting standards.</p>
4 Arrange the audit of the financial report and obtain an auditor's report (if required)	<p>A large proprietary company must:</p> <ul style="list-style-type: none">• prepare a financial report• have the report audited• obtain an auditor's report. <p>A small proprietary company does not have to obtain an auditor's report if the financial report was prepared on a member direction and that direction did not ask for the finance report to be audited.</p>
5 Prepare a Directors' Declaration in respect of a financial report	<p>A Directors' Declaration is a declaration by the company's directors declaring whether, in the directors' opinion:</p> <ul style="list-style-type: none">• there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable• the financial statements and notes are in accordance with the Corporations Act.

Obligation	Comments
<p>6 Arrange preparation of a Directors' Report (if required)</p>	<p>A Directors' Report for each financial year must include the "general information" set out in s299 and the "specific information" set out in s300 of the Corporations Act, and a copy of the auditor's declaration under s.307C(1) in relation to the audit for the financial year (if the audit is required).</p> <p>A Directors' Report must:</p> <ul style="list-style-type: none"> • be made in accordance with a resolution of the directors • specify the date on which it is made • be signed by a director. <p>A small proprietary company does not have to prepare a Director's Report if it is preparing financial statements as a result of a shareholder direction and the direction specified that a Director's Report need not be prepared.</p>
<p>7 Ensure annual financial reporting to members (if applicable)</p>	<p>A company which is required to report to members for a financial year may do so by sending each member either a:</p> <ul style="list-style-type: none"> • Financial Report, Directors' Report and Auditor's Report (if required) • Concise Report. <p>A small proprietary company which is directed by the members to prepare a financial report must report to members by the later of:</p> <ul style="list-style-type: none"> • 2 months after the member direction • 4 months after the end of the financial year. <p>In respect of other proprietary companies, reporting to members must occur within 4 months after the end of the financial year.</p>
<p>8 Ensure annual financial reporting to ASIC (if applicable)</p>	<p>A company that has to prepare a financial report, auditor's report and directors' report must lodge the report with ASIC within 4 months after the end of the financial year.</p> <p>A small proprietary company which prepares a report upon an ASIC or member direction does not have to lodge its financial report, auditor's report or directors' report with ASIC.</p>

3.6 Annual company statement

On a company's "Review Date" being the date of or shortly after the anniversary of the company's date of incorporation, ASIC will prepare and forward the Annual Company Statement to the registered office, or, to the registered electronic agent of the company if one has been appointed. Once the Annual Company Statement is received, the obligations set out below will apply.

Action/Notice	Comments
<p>1 Check the Annual Company Statement</p>	<p>The contents of the Annual Company Statement include the company's:</p> <ul style="list-style-type: none"> • ACN • name • address of registered office and principal place of business • directors' and secretary's name • share structure • members' (top 20 if more than 20), names • ultimate holding company. <p>The Annual Company Statement must be checked carefully by the secretary. If there are any changes to be made to the statement, an ASIC Form 484 "<i>Change to company details</i>" must be completed and lodged with ASIC within 28 days of the Review Date.</p> <p>Even if there are no changes, the annual review fee must be paid within 2 months of the Review Date.</p>
<p>2 Directors' solvency resolution</p>	<p>Within 2 months of the Review Date, the directors must resolve whether, in their opinion there are reasonable grounds to believe the company will be able to pay its debts as and when they become due and payable. Such resolution is not required if the company has lodged a Financial Report with ASIC under Chapter 2M of the Corporations Act within 12 months before the Review Date.</p> <p>If the directors are unable to resolve that the company will be able to pay its debts as and when they fall due, an ASIC Form 485 "<i>Statement in relation to company insolvency</i>" must be lodged with ASIC within 7 days after the date the directors of the company passing a negative solvency resolution, or if a solvency resolution has not been passed, within 7 days after the end of the statutory 2 month period from the Review Date.</p>

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