



ASIC

Australian Securities & Investments Commission

APPLICATION FOR ASIC REINSTATEMENT

COMPANY NAME _____

ACN _____

CONTACT PERSON _____

CONTACT ADDRESS _____

PHONE No _____ FAX No _____

CHECKLIST FOR APPLICATION

- Complete and sign Statutory Declaration
- Provide supporting documentation as annexures to the Statutory Declaration
- Include payment for \$33.00 application fee
- Include payment for all outstanding amounts owing to ASIC including:
 - any outstanding penalties, fines and ASIC court costs
 - any outstanding fees
 - any outstanding annual review fees
 - any late payment fees for issued annual reviews
 - any late lodgement fees
- Include Form 484 *Change to company details* to advise any changes made to:
 - registered office
 - principal business office
 - ultimate holding company
 - appointment/cessation of officeholder/s
 - change to officeholder/s name or address
 - change to members' names or addresses
 - changes to company's share structure

Form 484 is available from ASIC's website at www.asic.gov.au.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Further information on fees and charges:

Annual review fees must be paid within two months of the date of review. When a company is reinstated it is taken as never having been deregistered. This means that annual review fees for the period of deregistration are now payable.

Late payment fees may apply if an annual review fee was payable at the time of deregistration.

- If paid up to one month late - \$65 late payment fee
- If paid one month or more late – \$270 late payment fee

Late review fee

If an annual statement was issued before the company was deregistered and it was not correct, you must notify ASIC of the changed information by lodging a Form 484 *Change to company details*. You have 28 days from the date of issue of the annual statement to notify us.

If the correct information is not notified within the 28 day review period, the company will be charged a late review fee:

- If notified up to one month late - \$65 late review fee
- If notified one month or more late – \$270 late review fee

Note: Multiple late review fees will apply where a company fails to notify ASIC of changes that should have been advised at the time of, or prior to, the issue of earlier annual statements.

Late lodgement fee

A late lodgement fee may be charged in addition to a late review fee. This is because any changes to company details should normally be notified by lodging a Form 484 within 28 days of the original change occurring.

Notifications lodged outside this 28 day period will incur a late lodgement fee:

- If lodged up to one month late - \$65 late lodgement fee
- If lodged one month or more late – \$270 late lodgement fee

Attach this APPLICATION FOR ASIC REINSTATEMENT to all documents relating to this application and send to:

Reinstatement Applications
Australian Securities and Investments Commission
PO Box 4000
GIPPSLAND MAIL CENTRE VIC 3841

Commonwealth of Australia
 STATUTORY DECLARATION
Statutory Declarations Act 1959

1 *Insert the name, address and occupation of person making the declaration*

I,¹

make the following declaration under the *Statutory Declarations Act 1959*:

2 *Set out matter declared to in numbered paragraphs*

²

1. Upon the reinstatement of

(insert name and ACN of applicant company)

(the "company") I will hold the office of a director of the company.

2. If the registration of the company is reinstated, the company will be able to pay its debts as and when they fall due.
3. Tick the appropriate option below:

- The company was deregistered under s601AB(1) of the Corporations Act 2001, where:
- (a) the response to a return of particulars given to the company (or an annual return under s1447) is at least 6 months late; and
 - (b) the company has not lodged any other documents under the Act in the last 18 months; and
 - (c) ASIC has no reason to believe that the company is carrying on business.
- The company was deregistered under s601AB(1A) of the Corporations Act 2001 for non-payment of the review fee.
- The company was voluntarily deregistered via Form 6010 *Application for voluntary deregistration of a company*.

4. Tick the appropriate option/s below

- The company was carrying on business or was in operation at, and subsequent to, the time that the registration of the company was cancelled.
- I have provided information, which substantiates the claim that the company should not have been deregistered. This information is attached as Annexure A.*

*Annexures attached to the statutory declaration must be signed by the Justice(s) of the Peace (or as the case may be) before whom the declaration was made.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 *Signature of person making the declaration*

3

4 *Place*

Declared at ⁴ on ⁵ of ⁶

5 *Day*

6 *Month and year*

Before me,

7 *Signature of person before whom the declaration is made (see over)*

7

8 *Full name, qualification and address of person before whom the declaration is made (in printed letters)*

8

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

A statutory declaration under the *Statutory Declarations Act 1959* may be made before—

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
- Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
- Bailiff
- Bank officer with 5 or more continuous years of service
- Building society officer with 5 or more years of continuous service
- Chief executive officer of a Commonwealth court
- Clerk of a court
- Commissioner for Affidavits
- Commissioner for Declarations
- Credit union officer with 5 or more years of continuous service
- Employee of the Australian Trade Commission who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and
 - (c) exercising his or her function in that place
- Employee of the Commonwealth who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
 - (c) exercising his or her function in that place
- Fellow of the National Tax Accountants' Association
- Finance company officer with 5 or more years of continuous service
- Holder of a statutory office not specified in another item in this list
- Judge of a court
- Justice of the Peace
- Magistrate
- Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
- Master of a court
- Member of Chartered Secretaries Australia
- Member of Engineers Australia, other than at the grade of student
- Member of the Association of Taxation and Management Accountants
- Member of the Australasian Institute of Mining and Metallurgy
- Member of the Australian Defence Force who is:
 - (a) an officer; or
 - (b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
 - (c) a warrant officer within the meaning of that Act
- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
- Member of:
 - (a) the Parliament of the Commonwealth; or
 - (b) the Parliament of a State; or
 - (c) a Territory legislature; or
 - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*
- Notary public
- Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
- Permanent employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority; or
 - (c) a local government authority;
 with 5 or more years of continuous service who is not specified in another item in this list
- Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
- Police officer
- Registrar, or Deputy Registrar, of a court
- Senior Executive Service employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority
- Sheriff
- Sheriff's officer
- Teacher employed on a full-time basis at a school or tertiary education institution



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INFORMATION SHEET 4

Reinstatement of the registration of a company

This is a guide for company officers seeking to restore their company to the corporate register. All legislative references are to the *Corporations Act 2001* (the Act) and are listed at the end of this document.

What is reinstatement?

When a company becomes deregistered, it is no longer recorded on our database as a registered company, and is therefore unable to trade or take any action as a body corporate.

Reinstatement returns the company to registered status as if it was never deregistered.

How can a company be reinstated?

There are two different methods to request the reinstatement of a company. You may apply to ASIC if you can meet certain criteria. If you do not meet the criteria for ASIC reinstatement, you may apply to the Court for an order that ASIC reinstates the company.

1. Application to ASIC

Apply to ASIC if there are grounds to believe that deregistration was incorrect.

We can reinstate the registration of a company if we are satisfied that the company should not have been deregistered.ⁱ

However it is not enough just for the reinstatement to be convenient for you. For your application for reinstatement to be considered you must be able to demonstrate relevant facts to support that the company should not have been deregistered.

For companies deregistered by us for not lodging annual returns or returns of particularsⁱⁱ or for not paying review feesⁱⁱⁱ

You must be able to provide valid proof that will demonstrate that:

- there was a procedural defect or oversight in the procedure leading to the deregistration; or
- the company was carrying on business or was in operation at the time it was deregistered.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

For companies deregistered voluntarily^{iv} or wound up (liquidation)^v

You must be able to provide valid proof that will demonstrate that there was a procedural defect or oversight in the procedure leading to the deregistration.

ASIC application - what is required before a company can be reinstated?

To apply for the reinstatement of your company you must complete the attached *Application for ASIC Reinstatement* and:

- a. Lodge a statutory declaration supported by appropriate documentation (where applicable).
- b. Lodge any outstanding documents with us. The documents must be fully completed and correct before any reinstatement action is taken.
- c. Pay all lodging and late fees arising from the lodgement of these documents and any other unpaid documents already on record.
- d. Pay all outstanding annual review fees, late review and late lodgement fees (if any) in full.
- e. Pay any outstanding penalty issued under a penalty notice to the company or one of the officers of the company, court-ordered fines and ASIC court costs.
- f. Pay the prescribed fee for the application for reinstatement.

You should contact us to obtain details of outstanding lodgements, lodgement fees, late fees, penalty notices and any unpaid fees for your company. You can telephone our Client Contact Centre on (03) 5177 3988

Send the completed *Application for ASIC Reinstatement*, together with supporting documents and payment for fees, to:

Reinstatement Applications
 Australian Securities and Investments Commission
 PO Box 4000 GIPPSLAND MAIL CENTRE VIC 3841

2. Application to the Court

Apply to the Court for an order that ASIC reinstate the company

If you cannot meet the requirements to apply to us for the reinstatement of the company, you can apply to the Court (either the Federal Court of Australia or the Supreme Court of one of the States or Territories).^{vi}

People who feel disadvantaged by the deregistration of the company (e.g. creditors, other bodies taking legal action against the company, a former liquidator) may also apply to the Court for the reinstatement of the company.

The Court can make an order that ASIC reinstate a company upon being satisfied that the company should be reinstated. The Court may also make an order validating acts between deregistration and reinstatement, and any other order it considers appropriate.^{vii}

Reinstatement by the Court^{viii}

Upon obtaining an order for reinstatement from the Court, a copy of the order with original prothonotary stamp that issues from the Court must be lodged with us, together with a completed Form 105 *Cover page for office copy of a court order* before we will restore the company's registration to the register.

If you need to take up this option, you should seek your own independent legal advice.

Applications for Court reinstatement must be served on an ASIC Regional Office or the IPC for the relevant state or territory of the company, refer to the following address list.

Note this list only applies to Court applications for reinstatement, for other reinstatement matters, please refer to the "ASIC reinstatement - what is required before a company can be reinstated?" for relevant contact details:

Queensland

Sarah Heke

Australian Securities and Investments Commission

Level 20, 240 Queen Street BRISBANE QLD 4000

GPO Box 9827 BRISBANE QLD 4001

Tel: (07) 3867 4860 Fax: (07) 3867 4800

All other States and Territories

ASIC Court Officer

Australian Securities and Investments Commission

14-22 Grey Street TRARALGON VIC 3844

PO Box 4000 GIPPSLAND MAIL CENTRE VIC 3841

Tel: (03) 5177 3050 Fax: (03) 5177 3999

What if someone else has used my company name while my company was deregistered?

When a company is deregistered, an application for registration of another company with the same name as the deregistered company is permitted. We are only required to ensure that no registered company has the same name as the new company.^{ix}

If the company name is no longer available, you will need to submit with the reinstatement application, a Form 205 *Notification of resolution* to change your company name, together with the prescribed fee of \$330.

What happens if my company is reinstated?

The company is taken to have never been deregistered. All the existing company officers are restored to their roles from the date the company was deregistered.^x

What happens if my company is not reinstated?

Your company cannot trade as it is not registered. Any remaining company assets become controlled by us and may be sold or redeemed.^{xi}

Further information

ASIC's Policy Statement No 83 *Reinstatement of companies* provides further information on applications for reinstatement. You can obtain individual copies of Policy Statement No 83 from www.asic.gov.au/ps.

Important notice

Please note that this is a summary giving you the basic information you need. It does not cover the whole of the relevant law and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances need to be taken into account when determining how the law applies to you.

ⁱ Section s601AH(1) of the Act

ⁱⁱ Section s601AB(1) of the Act

ⁱⁱⁱ Section 601AB(1A) of the Act

^{iv} Section 601AA of the Act

^v Section 601AB(2) of the Act

^{vi} Section 601AH(2) of the Act

^{vii} Section s601AH(3) of the Act

^{viii} Section 601AH(2) of the Act

^{ix} Section 147(1)(a) of the Act

^x Section 601AH(5) of the Act

^{xi} Section 601AD of the Act