

Public Company Limited By Guarantee

A public company limited by guarantee is one of the structures which can be suitable for not for profit organisations.
In this fact sheet, we outline some of the features of this type of company.

Features of a public company limited by guarantee

- The company consists of members not shareholders.
- No shares are issued.
- Members agree to provide guaranteed amount to meet outstanding claims of creditors usually of the order of \$10-\$20 in the event the company is wound up.
- The company has a defined “Object” or “Purpose” which it must pursue.
- Generally speaking, directors have the same duties and obligations as directors of a proprietary company, for example to act in the best interests of the company, and not to misuse their position for their own benefit.

Charitable companies

Where a public company limited by guarantee has a *charitable purpose**:

- The company cannot distribute any surplus or assets to its members. The assets and income of the company must be applied for the charitable purpose as stated in the company’s constitution.
- If the company is wound up, any assets remaining must be paid to another charitable organisation. Additional restrictions apply if the company has been endorsed as a *Deductible Gift Recipient**

How are public companies different?

Some of the differences between a public company limited by guarantee and a private company limited by shares are set out in the table below.

Public company limited by guarantee	Private company limited by shares
Members	Shareholders
Minimum 3 directors & 1 secretary	Minimum 1 director
Members’ liability is limited to an amount that has to be contributed should the entity be wound up	Liabilities limited to the amount of the unpaid shares
Charitable companies cannot distribute profits to members	Can distribute profits to shareholders
Required to lodge annual reports	No need to lodge annual reports
May be registered without ‘Limited’ in its name if certain requirements are met.	‘Limited’ must appear in its name
Annual review fee for charitable companies: \$40.	Annual review fee: \$212.

Not for Profit Fact Sheet

Requirements for public companies – from ASIC's website

A public company must:

- Have at least 3 directors and 1 secretary;
- Have at least 1 member;
- Have a registered office address and principal place of business located in Australia;
- Have its registered office open and accessible to the public;
- Be internally managed by a Constitution or Replaceable rules;
- Maintain a register of its members;
- Keep a record of all directors' and members' meeting minutes and resolutions;
- Appoint a registered company auditor within 1 month of its registration;
- Keep proper financial records;
- Prepare, have audited and lodge financial statements and reports at the end of every financial year;
- Send to its members a copy of its financial statements and reports, unless the member has a standing arrangement with the company not to receive them;
- Hold an Annual General Meeting once every calendar year within 5 months of the end of its financial year;
- Receive and review an annual company statement and pay an annual review fee.
- Lodge notices whenever changes to its officeholders, office addresses, constitution and its name occur within specified timeframes as determined by the Corporations Act 2001.

“Limited”

A company limited by guarantee may be registered without the word 'Limited' in its name. This is only possible if its constitution:

- requires the company to pursue charitable purposes only and to apply its income promoting those purposes; 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 makes to directors.

*Definitions

Charitable purpose has a technical legal meaning. Charitable companies may be endorsed for tax concessions including exemption from income tax.

A *Deductible Gift Recipient* is an entity or fund that can receive tax deductible gifts.

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