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ASIC Reduces Review Fees for Not-for-Profit Companies

Not for Profit Update

ASIC reporting requirements and review fees

Under the *Corporations Act 2001 (Cth)*, companies are required to report to the Australian Securities and Investments Commission **(ASIC)** by lodging financial, directors' and auditor's reports and are to pay an annual 'review fee' once every financial year.

The review fees are set out under the *Corporations (Review Fees) Regulations 2003 (Cth)* **(Regulations)**.

For a public company (including a public company limited by guarantee) the full rate annual review fee is $1069.

Reduced review fees for "special purpose companies"

Companies classified as "special purpose companies" under the Regulations are entitled to reduced annual ASIC review fees.

The annual review fee for a "special purpose company" is $40, which is a significant reduction from the full rate annual review fee.

Is your not-for-profit company a "special purpose company"?

Some "special purpose companies" are referred to by ASIC as "non profit companies" or "not-for-profit companies". However not all not-for-profit companies will necessarily meet the requirements of a "special purpose company" for ASIC's purposes.

Under Regulation 3, a "special purpose company" relevantly includes the following companies:

Who does this affect?

Not-for-profit companies that meet the "special purpose company" criteria.

Article Highlights

- Not-for-profit companies classified as "special purpose companies" are entitled to a $1000+ saving on their ASIC review fees.
- If a not-for-profit company does not meet the "special purpose company" requirements, this will only disqualify the entity from a reduction in ASIC review fees.
- All ATO not-for-profit or charitable entity status will remain unchanged.

a) a company that is permitted under the *Corporations Act 2001 (Cth)* to omit 'Limited' from its name; or

b) a company limited by guarantee, or by both shares and guarantee, that was registered before 1 July 2003 - if the constitution of the company states that the company:

c) is formed for the purpose of providing recreating or amusement or promoting commerce, industry, art, science, religion, charity, patriotism, pension or superannuation schemes or any other object useful to the community; and

   (i) applies its profits (if any) or other income in promoting its purpose; and

   (ii) prohibits the distribution of its income or property to its members; or

d) a company the constitution of which:

   (i) requires the company to pursue charitable purposes only and to apply its income in promoting those purposes; and

   (ii) prohibits the company making distributions to its members and paying fees to its directors; and

   (iii) requires its directors to approve all other payments the company makes to them.

If a company meets the above requirements of a "special purpose company", it will need to inform ASIC that it is a "special purpose company" either:

e) at the time of registration on the Form 201 Application for registration as an Australian company, or

f) at a later date by lodging a Form 484 Change to company details and completing Section B3 – Special Purpose, stating the special purpose of the company and the date that the company started operating as a special purpose company. There are no fees for lodging this form.

The company will also need to include a declaration made by a company officer to support the company's claim that it meets the requirements for a special purpose company. ASIC has a template available for this declaration.

Relevance of Directors' Fees

A company that pursues charitable objects or conducts not-for-profit activities will only be classified as a "special purpose company" if it does not distribute profits to members or pay directors' fees.

The reality is that many not-for-profit companies do in fact pay their directors fees (albeit often nominal). However, even if the company's objects are charitable and the company operates strictly on a not-for-profit basis, any remuneration to a director will disqualify the company from meeting the requirements for a "special

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purpose company" and receiving reduced ASIC annual review fees. Note that reimbursement of a director's out-of-pocket expenses would not alone disqualify a company.

Are there other consequences of not being a "special purpose company"?

If a company does not meet the requirements of a "special purpose company" this will only mean that the company must pay the full ASIC annual review fees under the Regulations.

It will not in any way affect the company's status as an ATO endorsed charitable entity (e.g. charitable institution or public benevolent institution). Nor will it have any adverse implications on any reduced or simplified financial and auditing reporting requirements the company is entitled to under the *Corporations Act 2001 (Cth)*. The reduced and simplified reporting requirements were introduced for public companies limited by guarantee on 28 June 2010 by the *Corporations Amendment (Corporate Reporting Reform) Act 2010 (Cth)*.

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