

Description	This guide looks at the considerations and steps involved in establishing a Company.
Other relevant guides	<ul style="list-style-type: none">- <i>How to set up a Unit Trust</i>- <i>How to negative gear with a Unit Trust</i>- <i>How to negative gear with a Discretionary Trust</i>
Documents required	<ul style="list-style-type: none">- <i>Constitution</i>- <i>Consent to act as Director</i>- <i>Consent to act as Secretary</i>- <i>Consent to use Registered Office</i>- <i>Member Consent</i>- <i>Share Certificate</i>
Notes	When forming a company, a number of considerations need to be resolved before following the steps to its establishment.

Step 1 – Determine the identity of the company’s director(s) and shareholder(s) (see below):

As the directors can be held personally liable the position should only be held by risk takers without any assets. Many people establish companies with the husband and wife as directors. The only time this should happen is in relation to a company acting as trustee of a self managed superfund where both Mum and Dad are members.

NOTE: Special rules apply where the company is going to act as trustee of a self managed superfund. Also a special purpose company established only to act as trustee of a self managed superfund will cost less to maintain.

WARNING: In certain circumstances, the directors of a company may be sued for its debts.

Step 2 – Complete the instruction sheet, setting out the proposed company’s details including who will fill the above positions

It is advisable to come up with 3 or 4 names for a company as many people find their first choice is taken. Directors, secretaries, and shareholders can be added and/or removed at a later stage. Many people establish a company with a single director, secretary, and shareholder.

NOTE: You can call your company any name you like as long as no other company exists with the same or similar name, or someone hasn’t registered the name as a business name.

Establishing a Company

The screenshot shows the Macquarie Group Services website. The header includes the MGS logo and navigation links: Home, Products, Services, Information, Macquarie TV, Documents, About, and My Account. The main banner features the text 'The Professionals Choice' and 'Providing tax, superannuation education and precedent products'. Below the banner is a form titled 'General Purpose Company'. The form includes fields for 'Company Name', a checkbox for 'The company name is identical to a registered business name', dropdown menus for 'Incorporation State', 'Registered Office Address', and 'Business Address'. There are also sections for 'Officers' and 'Shareholders' with 'Add New' buttons, and a 'Beneficially Held Shares' section with a note: 'It is essential that indication be given if shares are not beneficially held. When shares are beneficially held the member receives all rights and'.

TIP: If the company is going to be trustee for a trust that is going to hold a property some people name the company after the address of the property (i.e. 14 Martin Place Pty Limited).

Step 3 – When the company documentation arrives, ensure that:

1. The shareholders sign the relevant consents;
2. The directors execute the share certificates;
3. The directors sign the consents to act as directors; and
4. That the secretary signs the consent to act as secretary.

Step 4 – Lodge any documents required to be lodged with the Australian Securities & Investments Commission

Certain ASIC forms are required to be lodged and although most do not attract a fee if they are lodged late then fines will apply.

Step 5 – The director (s) enter into transactions on behalf of the company

NOTE: Step 3 must be completed before the company conducts any business.

Consideration	Description	Suggestion	Tip
Who will be the Director?	The director(s) act as agent for the company and make all decisions and engage the company in contracts and transactions.	The directors are usually the husband or wife running the company.	Avoid making the spouse who holds any assets a director.

Establishing a Company

Who will be the Secretary?	The secretary(s) conducts all the company secretarial business on behalf of the company.	The secretary is usually one of the directors.	As above.
Who will be the Shareholder?	The shareholders either hold shares giving a right to capital, dividends or voting entitlements or a combination of these.	The shareholders are usually the same as the directors.	Select either a discretionary trust or the spouse who holds assets.

Other Important Information

1. A company continues indefinitely;
2. The director(s) and shareholder(s) of a company may be the same person;
3. A company can be sued and can sue independently of its shareholders;
4. Additional shareholders and/or directors can be added at any time;
5. The shareholders of a company usually have the power to remove its directors;
6. If the directors of a company operate it after it can no longer pay its debts, they may be held personally liable;
7. The rate of tax on profits and/or capital gains derived by a company is 30%;
8. A company does NOT receive the general 50% Capital Gains Tax discount. As a result, companies should not hold passive investment assets that are likely to appreciate in value; and
9. Tax liabilities may arise on the removal of capital amounts from companies.

NOTE: The above information is meant as a general guide only, and the information applies to the companies provided by Macquarie Group Services.

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