



NCS
CORPORATESUPPORT

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NCS Newsletter - June 2010

WELCOME MESSAGE

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Welcome to the June 2010 issue of our eNewsletter. As we come to the end of the 2009/10 financial year, it's a time to reflect on a challenging year for many businesses and plan for the year ahead.

Lots of changes are coming up from 1 July 2010 and many of them affect corporate secretarial and ASIC compliance issues. Our aim is to keep up-to-date, keep our clients informed and offer a comprehensive range of services, tailored to your special needs.

FEATURE ARTICLE

Australian Business Number (ABN) Business Name Registration Project



We at NCS are really excited about this long awaited project finally being approved and set to commence 1st April 2011 (April Fools' Day! – we hope that's not an omen!).

Currently, "Business Names" or "Trading Names" are governed by the individual State and Territory Governments, hence there are slightly different rules, regulations, forms & fees in every State and Territory. This causes much frustration and many anomalies.

For example: You can have "Metals Traders" registered as a "Business Name" in every State with a different owner. Then, if one of the owners of "Metals Traders" was doing well and wanted to incorporate "Metals Traders Pty Ltd" and operate nationally, they would be rejected by ASIC because of the other currently registered business names in the other States.

NAVIGATION

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Currently business names can be rejected if the proposed name is considered too similar to a currently registered Business Name. Business Names applications can be approved in one State and rejected in another; There is no consistency for businesses who trade in more than one State or Territory in Australia.

If a business wants to trade in both Victoria and New South Wales but only has a physical office in Victoria, then they must appoint a "Resident Agent" in New South Wales which all costs extra to administer and adds to their compliance burden.

The State and Territory Governments have finally agreed to refer their powers for Business Names to the Federal Government to allow a "National Business Name Registration" system. This new system promises to deliver online business information services and improve ongoing interactions between government and business.

The initiative will deliver on a number of objectives including:

- A seamless online registration process for ABNs and National Business Names
- Improved Trade Mark searching
- Improved online availability of Business Name registration
- Improved awareness about different rights conferred by Business Names in comparison to Trade Marks
- Reduced compliance burden on small businesses by capturing common data and pre-filling forms
- Reduced compliance burden on businesses by consolidating information delivery on regulation from all levels of government

Government departments which are involved with the project include:

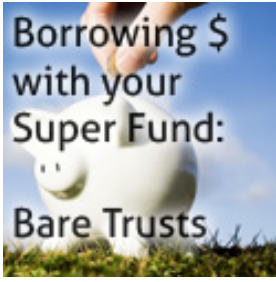
- The Department of Innovation, Industry, Science and Research
- The Treasury
- Australian Securities and Investments Commission (ASIC)
- Australian Taxation Office (ATO)
- IP Australia
- State and Territory small business, fair trading and consumer affairs agencies

Approximately 600,000 ABNs and 250,000 Business Names are registered each year. These are the most common registrations for clients when starting a business.

Would you believe that a series of forums in each capital city were organized to consult on the proposed National Business Names registration system, however, Corporate Registry Services like NCS and other interested parties were not informed?

Legislation is currently being drafted and we will keep you up-to-date with any progress or further information relating to this project and its implementation.

Bare Trusts - SMSF Borrowing



NCS has recently had a number of enquires relating to setting up a "Bare Trust" for Self Managed Superannuation Funds ("SMSF's") borrowing. After investigating what is involved in establishing a Bare Trust properly, NCS has made a decision to leave setting up these particular trusts to experts in Superannuation.

It is so important to set this type of structure up correctly and comply with the Superannuation Industry (Supervision) Act 1993 and subsequent amendments (SISA). Bare Trusts are complex and expensive to establish; the deed must contain an investment strategy to allow for loans and be supported by legally sound documents and a loan agreement.

How a Complying SMSF Loan works:

The Lender lends to the Super Fund on a limited recourse basis. Loan repayments are made from the Super Fund to the Lender. The Bank or Related Party Lender takes a mortgage over the Property held by the Custodian Trustee (Trustee of the Bare Trust).

The Super Fund pays the deposit on the Property when contracts are signed. The loan proceeds are then applied to fund the acquisition of the Property, with the Super fund paying the remainder of the purchase price. The loan proceeds are paid directly from the Lender to the Vendor.

The Vendor transfers ownership of the Property to the Custodian Trustee. The Custodian Trustee holds the title to the Property and should be noted on the Contract of Sale. The Super Fund holds a beneficial interest in the Property by way of its contribution to the purchase price of the Property and the structure of the Custodian Trust document. Once the loan has been repaid to the Lender, the Custodian Trustee can transfer the title to the Super Fund.

Some important points to note relating to the documentation:

1. The property that the Super Fund wishes to purchase must be property that the Super Fund could otherwise invest in if bought outright and must comply with the in-house assets rule and sole purposes tests.
2. Pre-approval of the loan must be obtained.
3. The Trustee of the Bare Trust cannot be the same Trustee as the Trustee of the Super Fund. It is recommended to use a Corporate Trustee as Trustee of the Bare Trust.
4. Each property bought must have a separate Bare Trust set up.
5. Documentation required includes the Bare Trust deed and new Corporate Trustee. Make sure the Super Fund trust deed allows the fund to enter into an instalment warrant arrangement (some Super Fund deeds may need updating). Make sure the Fund's Investment Strategy is updated.
6. Make sure the contract is signed in the name of the Custodian Trustees (Corporate Trustee of the Bare Trust) or as required by your State Revenue Office.
Note: Some States require specific wording on the contract of sale.
7. Settle the property with the Custodian Trustee (Trustee of the Bare Trust) as the title holder.

As mentioned previously, these types of structures are complex and expensive to set up. Prices range from \$2,500 - \$5,000 depending on the supplier.

NCS can highly recommend TAG Financial Services Pty Ltd who are well known Superannuation Specialists who advise Accountants on technical issues, provide new SMSF Establishment deeds, Bare Trusts, administer Superannuation Funds, Audit Superannuation Funds and run Training Seminars. TAG currently charge \$3,000 plus GST to set up a Bare Trust and all supporting loan documents together with an updated Fund Investment Strategy.

ASIC Fee Increases - 1st July 2010



March quarter CPI figures, released on 28th April 2010 have resulted in an increase to fees chargeable under the Corporations (Fees) Act 2001 and Corporations (Review Fees) Act 2001.

The Federal Government amended Regulations to enable these fees to be indexed on an annual basis.

The fees will be indexed each financial year from 1st July 2010 based on any increase in the Consumer Price Index (CPI) for the March quarter immediately before the start of the next financial year.

Examples of some fee changes are:

Form/Fee	Current Fee	Fee From 1st July 2010
Annual Review Fee for Proprietary Company	\$212	\$218
Application for registration of Pty Ltd Company with share capital	\$400	\$412
Change of Company Name	\$330	\$340
Notification of a Charge	\$135	\$139
Notification of discharge or release of property from a Charge	\$65	\$67
Application for Voluntary Deregistration of a Company	\$33	\$34

For a list of the most commonly lodged ASIC documents and related fees and increased fees form 1st July 2010, please go to www.asic.gov.au (Information Sheet 30.)

Business Name Registration Fees

Be aware that Business Names Registration Fees in all States and Territories will rise on-or-around the 1st July 2010, usually in line with CPI increases.

Please visit the Ministerial Council on Consumer Affairs site for web addresses and contact details for all State and Territory offices. <http://www.consumer.gov.au/html/contacts.htm#act>

Norfolk Corporate Support (NCS) Fee Increases



Please note that NCS has not increased our fees for new company set-ups and trusts, since 1st September 2008. Even though many of our competitors will increase their fees for these services inline with ASIC Fee increases, NCS **will not be** increasing our fees for new companies and trusts.

However, we have been recently reviewing our fees for our many other services and have found that some of our fees for services will have to be increased.

For example: Our service provider for company searches has increased their costs to us twice in the last 12 months. We have absorbed these additional costs to date but can no longer afford to do so.

Also, some of our fees for "one-off" and "bulk" annual reviews will have to increase slightly to maintain profitability.

NCS will be writing to all our clients to advise any NCS Fee Increases prior to 30th June 2010 and will include our new Fee Schedule to commence on 1st July 2010.

Training Courses For Corporate Secretarial & ASIC Compliance

NCS runs regular training courses or workshops for new staff who need some training in this area or to update their knowledge. Please check our website for dates and venues for the remainder of 2010 - www.ncs-services.com.au

Topics and training can be tailored to your needs. For further details, please call Sue Norfolk on (03) 9466 9990.

ASIC - No Longer A "Toothless Tiger!"

Federal Court clarifies ASIC's power to disqualify directors

The Federal Court of Australia has dismissed an appeal initiated by Mr Brian Malcolm Culley challenging the decision of ASIC to disqualify him from managing corporations for 2 years.

On the 26th Feb 2007 Mr Culley was disqualified by ASIC in relation to his involvement in the affairs of four failed companies.

Mr. Culley was found to have failed in his duties as a director by allowing the companies to accrue significant statutory debts and to trade while insolvent.

Mr Culley appealed the disqualification at the Administrative Appeals Tribunal (AAT) which affirmed ASIC's decision in 2008. Mr. Culley subsequently appealed AAT's decision to the Federal Court which was dismissed, For further details, please go to www.asic.gov.au

ASIC charges 2 men for carrying on a financial services business without holding an Australian Financial Services License

Mr Barry Patrick of Frankston, Victoria has been charged on 3 counts with carrying on a financial services business and 1 count of providing financial services without an AFSL License following an investigation by ASIC. Mr Patrick is also charged with 3 counts of managing a corporation while disqualified.

Mr Karl Velijovic of Beaconsfield, Victoria has been charged on 1 count with carrying on a financial service business without holding an AFSL in relation to Casey Business Finance.

ASIC alleges that between 1st Aug 2003 and 31st Dec 2006, Mr Patrick and Mr. Velijovic induced 40 investors to invest in property development schemes. The matter is being prosecuted by the Commonwealth Director of Public Prosecutions. For further details go to www.asic.gov.au

Public Company convicted for failing to lodge financial reports and hold meetings

An Australian public company, Biron Apparel Limited based in Melbourne, has pleaded guilty in the Melbourne Magistrates Court to 3 counts of failing to lodge financial reports with ASIC and 2 counts of failing to hold annual general meetings. The charges relate to the financial years ending 2007, 2008 & 2009.

The company was convicted and fined \$5,000.

The failure to lodge financial reports and hold meetings, restricts shareholder knowledge of the company's financial position, future prospects and viability.

The charges were brought about by ASIC as part of a campaign to take action against companies who fail to comply with their reporting and shareholder obligations under the Corporations Act.

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NEWSLETTER

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