

QUEENSLAND TREASURY

# Guidelines for the Formation, Acquisition and Post Approval Monitoring of Companies

June 2020

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# Contents

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>3</b>
1.1	Reason for Treasurer’s Approval .....	3
1.2	Purpose of these Guidelines .....	4
1.3	Structure of the Guidelines .....	5
1.4	Notifications .....	5
1.5	Help Desk Assistance .....	6
<b>2.0</b>	<b>PART ONE: PRELIMINARY CONSULTATION.....</b>	<b>7</b>
2.1	Public Interest Map (PIM) policy.....	7
2.2	Purpose of Preliminary Consultation .....	7
2.3	Information Required for Initial Consultation with Treasury .....	7
<b>3.0</b>	<b>PART TWO: BUSINESS CASE (FORMAL APPLICATION).....</b>	<b>11</b>
3.1	Purpose of the Business Case .....	11
3.2	The Business Case .....	11
3.3	Acquiring an interest in an existing company .....	22
3.4	Notification of formation.....	23
<b>4.0</b>	<b>PART THREE: POST APPROVAL MONITORING.....</b>	<b>24</b>
4.1	Purpose of post approval monitoring .....	24
4.2	Post approval monitoring.....	24
4.3	Post approval notifications .....	24
<b>5.0</b>	<b>PART FOUR: CHANGE IN OWNERSHIP OR WINDING UP OF COMPANY .....</b>	<b>25</b>
5.1	Transfer of companies between departments - business case to be prepared .....	25
5.2	Transfer or change of ownership – pre-transfer procedures.....	26
5.3	Transfer or change of ownership – post-transfer procedures .....	26
5.4	Defunct or insolvent companies .....	26
5.5	Notification of changes .....	27
	<b>APPENDICES .....</b>	<b>28</b>
A.	Director selection considerations .....	28
B.	Duties of directors .....	29
C.	Governance guidelines and requirements .....	31

D.	Issues to be considered and addressed and/or included in the application to the Treasurer.....	32
E.	Notification of company details form .....	37
F.	Post approval checklist.....	39
G.	Useful references .....	40

## 1.0 INTRODUCTION

Departments have flexibility in the manner in which they manage their resources. However, a situation may arise where there are compelling reasons why a department cannot, or should not, undertake a government activity.<sup>1</sup> For example, it could be considered that, in the public interest, the activity may be conducted with better economy, efficiency, effectiveness and accountability in a non-departmental body. **Only after all other government structures have been evaluated under the Public Interest Map policy<sup>2</sup> and found inappropriate should the department seek the Treasurer's approval under section 88 of the *Financial Accountability Act 2009 (FA Act)* to form or acquire a company under the *Corporations Act 2001 (Corporations Act)* to conduct the activity.**

Section 88 of the FA Act reads:

- (1) *A department may do any of the following only under a Treasurer's approval-*
- (a) *form, or participate in the formation of, a company;*
  - (b) *become a parent entity in relation to a company;*
  - (c) *become a member of a company.*
- (2) *The Treasurer may give an approval for subsection (1) only if the department has developed a business case that satisfies the Treasurer that a company is the appropriate vehicle for the purpose for which the approval is required.*

Section 58 of the *Financial and Performance Management Standard 2019 (FPMS 2019)* states that a department must have regard to 'Guidelines for the formation, acquisition, and post approval monitoring of companies' in applying for the Treasurer's approval in accordance with section 88 of the FA Act.

Section 88A of the FA Act deals with situations when ownership/responsibility for a company transfers between departments, such as following a machinery of Government change. In this situation, the receiving department must seek the Treasurer's approval within four months for its proposed action in relation to the company (e.g. retain, wind up or sell the company). If the decision is to retain the company, then the department must have regard to Part Four of these Guidelines.

### 1.1 Reason for Treasurer's Approval

Conducting a government function in a non-departmental structure such as a company potentially exposes the government to risks. These include, but are not limited to:

- reputation risk if public resources are perceived not to be economically, effectively and efficiently utilised and unwarranted costs are incurred in establishing and operating a company structure
- non-compliance with regulatory obligations under the Corporations Act, and
- denigration of the government's reputation in its stewardship of public resources if the company fails to remain financially viable. Notwithstanding the fact that liability may be limited under a company structure, the department needs to be mindful of the company's obligations to the wider community and the long-term effect a failure may have.

A company structure is **not** appropriate if the objective is to:

- undertake a normal activity of the department
- reduce the transparency and accountability of the use of public funds and assets
- avoid the need to comply with legislation and policies applicable to other public sector agencies, for example, the FA Act or any of its subordinate legislation and the policies that it mandates

<sup>1</sup> For purposes of this document, 'activity' includes projects and programs undertaken individually or as part of a whole-of-Government initiative to achieve stated government objectives. It may also refer to a department's role or required involvement in a larger project or program.

<sup>2</sup> Queensland Department of Premier and Cabinet, 'Public Interest Map (PIM)', May 2016.

- appease parties external to the Government, which may not be subject to the same government and accountability mechanisms as a public sector entity
- avoid the creation of a statutory body, where this structure provides a more appropriate governance framework, or
- shelter a department from risks that would not otherwise be acceptable.

A company structure may be appropriate for:

- ventures that require the creation of a separate legal entity (such as Co-operative Research Centres)
- joint activities with the Governments of other jurisdictions or other public sector entities where a statutory body or joint venture structure is not appropriate, or
- as a path to privatisation of a function where the formation of a company is a necessary preliminary to the sale of shares.

The Treasurer's approval is therefore required to ensure that a company is formed or acquired<sup>3</sup> only in those circumstances where it is the most suitable vehicle to achieve the desired outcomes of the department and without unduly increasing the risk profile of the department or the Government.

## 1.2 Purpose of these Guidelines

These Guidelines have been developed to outline issues that should be addressed by departments in an application to the Treasurer in terms of section 88 of the FA Act.

***These Guidelines do not constitute legal advice. Where a company structure is determined to be the most appropriate structure, departments should obtain their own independent legal and other professional advice in relation to any application to form or acquire a company.***

The following should be noted when using these guidelines:

- The appropriate Treasury Policy and Partnerships: Line Agency Team should be consulted during the process of determining the need for the formation or acquisition of an interest in a company and in all matters relating to the application for the Treasurer's approval
- During the application and approval process departments should seek their own legal and professional advice
- Additional documentation and information may be requested by Treasury during the evaluation/due diligence process, and
- The evaluation is designed to help protect the public interests. As the process may be time consuming, it is recommended that consultation with the appropriate Treasury Policy and Partnerships: Line Agency Team starts early in the planning and preparation stages of the business case.

Where more than one department is participating in forming a company, the appropriate Treasury Policy and Partnerships: Line Agency Team(s) should be consulted as to the requirements for each department's need to submit information. The application must clearly state which department will be responsible for the financial accountability monitoring of the company.

Although section 88 of the FA Act is not applicable to statutory bodies, section 60A of the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act) provides that a statutory body may, with the Treasurer's approval, form or participate in forming a corporation. Statutory body enabling legislation may also require the Treasurer's approval for the forming of new bodies. Consequently, these Guidelines may also assist statutory bodies to prepare a robust submission for the Treasurer's consideration and approval.

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<sup>3</sup> Throughout this document, for the purposes of these guidelines, the word 'form' or 'formation' will include all three activities of section 88, being form, become a parent or become a member of a company (acquire an interest in a company).

The term 'agency' used in this document primarily refers to departments but may also relate to other public sector bodies that use these guidelines.

These Guidelines should be read in conjunction with the Corporations Act, which can be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

## 1.3 Structure of the Guidelines

The Guidelines are divided into four parts which align with the process to obtain the Treasurer's approval for the formation of a company, and the subsequent post approval monitoring of the company.

- **Part 1: Preliminary consultation** – sets out the matters to be considered and for consultation with the appropriate Treasury Policy and Partnerships: Line Agency Team prior to lodging a formal application for approval to the Treasurer
- **Part 2: Formal Business Case** – sets out the matters to be addressed in the formal application to the Treasurer.
- **Part 3: Post Approval** – seeks to ensure that where a company is established, the governance, accountability frameworks and where applicable, the conditions under which the approval was granted, are fulfilled and maintained.
- **Part 4: Change of ownership or winding up** – outlines the process to be taken when transferring companies between agencies or when a change in the company ownership occurs. Actions for defunct or insolvent companies are also addressed.

For each of Parts 1 and 2 (preliminary consultation and the formal business case), the Guidelines provide background information, followed by questions and/or consideration points that should be addressed.

Given the breadth of information required to be addressed in seeking the Treasurer's approval, a collation of the consideration points to be addressed contained throughout these Guidelines is provided in Appendix D.

## 1.4 Notifications

It is important to note the following requirements if approval is granted:

### Notifications of formation

If the company is a public sector entity,<sup>4</sup> the appropriate Minister or agency must give the Treasurer and the Auditor-General notice of the establishment of the public sector entity<sup>5</sup>.

The Treasurer should be notified by completion of the *Notification of Company Details Form* included in Appendix E to these Guidelines. The completed form should be signed by the relevant officer and sent to the **Assistant Under Treasurer, Budget Strategy and Financial Reporting, Queensland Treasury**.

**The Auditor-General should be formally advised in writing of the establishment of the new company.**

If the company is a Government-related entity<sup>6</sup> for Goods and Services Tax (GST) purposes, the Australian Taxation Office requires proof for GST registration. This proof of identity must be obtained from the **Director, Commonwealth Taxes Unit, Queensland Treasury**.

### Notifications of changes

Treasury maintains a central register of all Queensland public sector related companies detailing ownership and other relevant information. To ensure this central register remains current, an updated *Notification of Company Details Form* included in Appendix E to these Guidelines should be submitted within 28 days following changes to the company details.

As per the requirements of the *Auditor-General Act 2009*, the Treasurer and the Auditor-General must also be informed of significant changes to the ownership or other activities of the company, for example, shareholding or

<sup>4</sup> Office of the Queensland Parliamentary Counsel, 'Auditor-General Act 2009', May 2009, s 40.

<sup>5</sup> Office of the Queensland Parliamentary Counsel, 'Auditor-General Act 2009', My 2009, s 33.

<sup>6</sup> *A New Tax System (Goods and Services Tax) Act 1999*, Australian Government Department of the Treasury, 'A New Tax System (Goods and Services Tax) Act 1999', July 1999. (Hereafter referred to as 'Goods and Services Tax Act 1999')

deregistration. A *Checklist to Notify Relevant Parties of Post Approval Changes to a Public Sector Company* in Appendix F to these Guidelines has been developed to assist agencies in this regard.

## 1.5 Help Desk Assistance

These Guidelines and referenced Treasury documents may be accessed on Queensland Treasury's internet site at [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au).

The appropriate Treasury Policy and Partnerships: Line Agency Team should be consulted during the process of determining the need for the formation of a company. If the Treasury Policy and Partnerships: Line Agency Team supports this need, this consultation should continue in relation to all matters pertaining to applying for the Treasurer's approval.

During the application and approval process agencies may need to seek their own professional advice to ensure all mandated requirements are understood and appropriately addressed.

For questions relating to or further information on these Guidelines please contact – [fmhelpdesk@treasury.qld.gov.au](mailto:fmhelpdesk@treasury.qld.gov.au).



## 2.0 PART ONE: PRELIMINARY CONSULTATION

### 2.1 Public Interest Map (PIM) policy

The PIM issued by the Department of the Premier and Cabinet (DPC) requires the completion of questions 1 to 6 in order to determine the correct structure of any new Queensland Government entity. When an assessment under the Public Interest Case determines a company structure is the most suitable, then the preliminary consultation under these guidelines can commence.

### 2.2 Purpose of Preliminary Consultation

Preliminary consultation with the appropriate Treasury Policy and Partnerships: Line Agency Team early in the application process will assist in determining the need for and suitability of a company structure (as determined by the Public Interest Case) and ensure that the agency's business case adequately considers all aspects required prior to requesting the Treasurer's approval.

This preliminary consultation phase only addresses initial high-level governance issues, and more detail will be required when compiling the formal application.

***Agencies are encouraged to consult with the appropriate Treasury Policy and Partnerships: Line Agency Team prior to dedicating resources to the formal application process.***

***The Treasury Policy and Partnerships: Line Agency Team will consult with Executive Services, DPC, ensuring that the company structure has been assessed under the PIM as potentially appropriate. Executive Services may also consult with the appropriate Policy Contact Officer in DPC.***

### 2.3 Information Required for Initial Consultation with Treasury

To facilitate an effective pre-application consultation process with the appropriate Treasury Policy and Partnerships: Line Agency Team, the applying agency should formulate and document a minimum amount of information. If the concept is supported by the Treasury Policy and Partnerships: Line Agency Team, most, if not all of this information will be incorporated into the subsequent formal business case which will form the basis for seeking the Treasurer's approval.

The following topics should be addressed (most of these items should have been adequately considered when the Public Interest Case was completed):

- (1) Purpose of the proposed company
- (2) Reasons for the use of a company structure
- (3) Strategic risk assessment, and
- (4) Proposed oversight arrangements.

#### 2.3.1 Purpose of the Proposed Company

A statement of the purpose of the proposed company should be prepared. It should include a clear and sufficiently detailed description of its specific objectives to provide the Treasurer with comfort that the company will continue to operate as proposed in its application. It will also assist directors to understand the parameters within which they have capacity to act.

*Points to be considered and addressed (most of these items should have been adequately considered when the Public Interest Case was completed):*

*What are the specific objectives and desired outcomes of the proposed company?*

*What will be the main activity of the company?*

*Does this activity form part of a larger project or program? If so, what is the purpose of the larger project or program and what is the role of the company?*

*What is the proposed life span of the company? Is it intended to have a limited existence, for example, to construct an asset or to carry out a specific project?*

*Will there be any ongoing interactions between the agency and company in the project or program other than for monitoring purposes? If so, what will these interactions be?*

## 2.3.2 Reasons for the use of a company structure

An objective and transparent analysis of all possible government structures should demonstrate why a company structure is the preferred organisational form. As a minimum, the following structures should have been evaluated and rationale provided in the PIM as to why these structures would not be more suited to fulfilling the stated objectives:

- Unit within the agency (for example, a statutory authority)
- Commercialised Business Unit (CBU)
- Committee or advisory council
- Statutory body

*Points to be considered and addressed (most of these items should have been adequately considered when the Public Interest Case was completed):*

*Why can this activity not be undertaken within the operational boundaries of the agency?*

*To what extent will this activity overlap with the normal day-to-day activities of the agency? If there is potential overlap, what steps will be taken to avoid duplication?*

*For each of the other government structures mentioned above, why can the structure not be used for this specific activity?*

*How does establishing a separate body justify the investment, additional staff, financial and other resources that may be required?*

*Why is a company structure considered the most appropriate?*

*If the activity to be undertaken by the proposed company is a commercial activity, why can it not be undertaken by the private sector (if necessary, on a fee for service basis?)*

## 2.3.3 Strategic risk assessment

Incorporation should result in decreased risk to the State, as company membership provides the advantage of limited liability. However, this advantage will be reduced if, for example, the State is required to provide ongoing funding, indemnities to directors or guarantees to third parties for the company's obligations. Also, community concerns may prevent the winding up of a public sector entity that has financial obligations outstanding.

Applications that rely in whole or in part on the argument that a particular risk is quarantined, should address the effectiveness of the proposed company structure in protecting the State from any risk incidental to the quarantined risk.

In some cases, a venture may already be in place, with the proposed company being formed to provide an appropriate incorporated vehicle for the venture. In these instances, the risk assessment should focus on comparing existing arrangements with the proposed new arrangements to identify risks arising from the change.

This strategic risk assessment is not an exhaustive statement of the risks to be considered in the application. Where other risks are identified in the due diligence process, each risk should be identified, evaluated and submitted as part of the formal application in section 3.2.9 of these Guidelines.

*Points to be considered and addressed:*

*How will the company be funded for both establishment and ongoing operations?*

*When is the company expecting to reach break-even point or deliver a return on investment?*

*Will the company be viable over the long term?*

*What, if any, indemnities or guarantees are to be provided to the company or its officers?*

*What are the risks to the State in forming the company? (Consider risks such as reputation and political risks, financial contingencies and legal liabilities.)*

## 2.3.4 Proposed oversight arrangements

Even though the proposed company will be governed by the *Corporations Act 2001* (Corporations Act) and not the *Financial Accountability Act 2009* (FA Act), it is still an entity with public interest due to the investment of government funds. It is therefore important that sound principles of accountability, economy, effectiveness and efficiency are embedded in the company's governance<sup>7</sup> structure.

The community effectively holds an interest in the public sector company. Consequently, the community needs to be confident that the policies of the elected governments, services delivered and conduct by the public officials are aligned with public interest.<sup>8</sup> When a public sector company is formed, the rights of the public and value for money are paramount.

Whether sole government or dual ownership is proposed, it is important that the governance structures developed and implemented match the risk profile of a public sector company.

Where multiple entity shareholding is proposed, mechanisms need to be developed to implement a governance framework that will clearly assign responsibility and provide effective Whole-of-Government coordination. These mechanisms need to address a potential imbalance of power which can result from the government taking less than a controlling interest in the company while retaining significant power to influence the outcomes of the particular activity through its governing role within the State. Significant influence usually translates into participation in the financial and operating policies without necessarily having full control over them. For example, the government may hold a substantial minority of the shares and may not have outright control, but could still be a major player in the company's decisions. Usually, a shareholder is considered to have significant influence if he/she has at least a 20 per cent holding in the company.

*Points to be considered and addressed:*

*Who will be the designated shareholders?*

*Will there be dual or multiple ownerships? If so, what will be the different shareholdings?*

*Will there be multiple entity shareholding? If so, to whom will the responsibility be assigned for effective whole-of-Government coordination?*

*How will the board be structured?*

*What will be the decision-making process (for example, simple majority) of the board?*

*What will be the powers of the establishing agency over the company?*

*Does the proposed board structure include members with public sector knowledge and experience?*

<sup>7</sup> In general terms, governance is concerned with how entities are controlled and the accountability and control mechanisms to which they are subjected: Understanding Company Law – Phillip Lipton & Abe Herzberg

<sup>8</sup> [Queensland Cabinet and Ministerial Directory, 'A Public Interest Map: An Independent Review of Queensland Government Boards, Committees and Statutory Authorities, December 2008.](#)

*Does the proposed board structure include members with private sector knowledge and experience?*

*What other 'Public Sector' Acts, Regulations and/or policies will be applicable to the company and how will these improve or impact on accountability and performance?*

*Will the company be required to report to and/or consult with the relevant Minister or agency on strategic issues?*

## 2.3.5 In-principle support

During the consultation phase of this application process, the Treasury Policy and Partnerships: Line Agency Team, in consultation with Executive Services, DPC, will assess the information to evaluate the arguments advanced by the agency that:

- a company is the most appropriate structure to achieve the stated objectives of the agency and Government, and
- the company structure will not unduly increase the risk profile of the State.

If the Policy and Partnerships: Line Agency Team provides in-principle support for the formation of a company at the end of this phase, the agency should progress to the preparation of a formal detailed business case application as set out in Part 3 of these Guidelines.

***In-principle support does not constitute the approval of the Treasurer to form a company pursuant to the Financial Accountability Act. The Treasury Policy and Partnerships: Line Agency Team may only make recommendations to the Treasurer. The decision to approve the application rests with the Treasurer. Further, the Treasury Policy and Partnerships: Line Agency Team reserves the right to depart from its in-principle position in considering the formal application.***

## 3.0 PART TWO: BUSINESS CASE (FORMAL APPLICATION)

### 3.1 Purpose of the Business Case

The purpose of the business case is to satisfy the Treasurer that a company is the most appropriate vehicle for the agency to undertake the activity. In assessing the application, consideration will be given to the risk profile, financial viability and accountability frameworks of the proposed company and the experience of its proposed directors. Different weightings may be given to these considerations depending on whether the company is to be wholly or partly owned by the government.

***Depending on the proposed company's operational circumstances, there may be other matters for which the Treasurer's approval will be required. These should be determined in conjunction with the appropriate Treasury Policy and Partnerships: Line Agency Team throughout the process of preparing the business case.***

### 3.2 The Business Case

The points below serve as a guide for compiling a business case. All issues specifically agreed between the Treasury Policy and Partnerships: Line Agency Team and the agency during the pre-application phase and subsequent discussions during the application process must be addressed in the business case.

The Treasurer's review is not restricted to the contents of these Guidelines. Although the business case may address all relevant points outlined in this document, the Treasurer has the discretion to approve or reject an application in full or in part. The Treasurer may, depending on the circumstances, impose additional requirements as formal conditions of any approval.

As a minimum, the business case should address the following topics:

- (1) Purpose of the company
- (2) Reasons for the use of a company structure
- (3) Proposed name and type of company
- (4) Constitution
- (5) Members
- (6) Directors
- (7) Company secretary
- (8) Administration
- (9) Risk assessment
- (10) Financial viability
- (11) Financial and performance accountability
- (12) Taxation
- (13) Ancillary agreements, and
- (14) Other issues.

### 3.2.1 Purpose of the company

Refer to the information under section 2.3.1 of Part One of these Guidelines.

*The application must include:*

*The information prepared under section 2.3.1, as well as any additional information requested by the appropriate Treasury Policy and Partnerships: Line Agency Team.*

### 3.2.2 Reasons for the use of a company structure

Refer to the information under section 2.3.2 of Part One of these Guidelines.

*The application must include:*

*The information prepared under section 2.3.2, as well as any additional information requested by appropriate Treasury Policy and Partnerships: Line Agency Team.*

### 3.2.3 Proposed name and type of company

The Corporations Regulations<sup>9</sup> provide guidance for establishing a name for a company. The Corporations Act<sup>10</sup> specifies the types of company that can be formed, for example companies limited by shares and companies limited by guarantee (refer also section 3.2.5).

*The application must include:*

*What is the proposed name of the company?*

*Does the name comply with Schedule 6 of the Corporations Regulations?*

*What is the proposed type of company?*

*Why was the proposed type of company selected?*

### 3.2.4 Constitution

The constitution of a company sets out the rules under which the company will be governed. It also defines its legal rights and duties, together with restrictions which may be placed on its operations. For example, when forming a public sector company, the constitution should include the company objectives, governance structures, the rights and conduct of members, the appointment and powers of directors and rules regarding any future changes to the constitution.

The company's constitution is effectively a contract under which each person agrees to meet his/her obligations as they apply to that person.<sup>11</sup> It is a contract between:

- (a) the company and each member
- (b) the company and each director and company secretary, and
- (c) a member and each other member.

The *Corporations Act 2001* (Corporations Act) contains a basic set of rules for the internal management of a company (appointments, meetings etc.). While a number of rules are mandatory and apply to all companies (for example, the passing of a special resolution), a company may also include replaceable rules in its constitution (for example, the powers of directors). While the Corporations Act does not prescribe what information must be contained in a company's constitution, it does provide a table<sup>12</sup> listing the replaceable rules that may be included.

<sup>9</sup> Australian Government Department of the Treasury, 'Corporations Regulations 2001', October 2001, Schedule 6.

<sup>10</sup> Corporations Act 2001, Australian Government Attorney-General's Department, 'Corporations Act 2001', September 2001, s 112(1). (Hereafter referred to as 'Corporations Act 2001')

<sup>11</sup> Corporations Act 2001, s 140(1).

<sup>12</sup> Corporations Act 2001, s 141.

The use of replaceable rules allows a company to incorporate additional measures to specifically control certain aspects of its operations.

Without appropriate controls defined in the constitution, the company, as a separate legal entity, has the power to conduct any activities that it considers appropriate within the confines of its constitution and the Corporations Act. The company will therefore have a constitution that incorporates an 'objects' clause that clearly sets out, and where appropriate limits, the activities that the company can conduct. Where the government or agency will have less than full controlling interest, the company's constitution should define the structures and decision-making processes that will govern the company.

Agencies should consult with Procurement Transformation in the Department of Housing and Public Works regarding any requirements in the Queensland Procurement Policy that need to be included in the constitution.

Subject to certain restrictions, a company's constitution may be modified or repealed if its members pass a special resolution.<sup>13</sup> Even when appropriate restrictions and requirements are inserted in the company's constitution, mechanisms should also be implemented to prevent members amending the constitution without the Treasurer's approval. For example, if the members were to amend the constitution in future to remove or amend the 'objects' clause, or form a subsidiary with 'objects' unrelated to those of the holding company, it would enable the company to undertake ventures beyond the scope of those contemplated and assessed under the Treasurer's original approval for formation.

Where the company is a public sector entity<sup>14</sup> the constitution should provide that the:

- Treasurer's approval is required for any amendment of the 'objects' of the company and, if appropriate, the amendment of other key provisions of the constitution, and
- formation of subsidiaries by the company requires the approval of the Treasurer,<sup>15</sup>

Where the company is not a public sector entity and it is not possible or appropriate for the Treasurer's approval to be inserted in the constitution, to ensure that amendment of the constitution or the formation of subsidiaries cannot take place without the approval of the member representing the State, and thus the Treasurer, a clause should be inserted into the constitution for either:

- the unanimous approval of the members, or
- a special resolution to be supported by the member representing the State.

Any ancillary agreements entered into between members as part of the process of company formation must be consistent with and cannot override these requirements (refer section 3.2.13).

The Australian Taxation Office (ATO) has specific clauses which the constitution of a not-for-profit company must contain to be eligible for tax concessions.<sup>16</sup>

A copy of the proposed constitution must be provided with the application.

***Agencies are encouraged to obtain legal advice on the content of the constitution (whether in-house or otherwise) to ensure that the rights of the State are not compromised, and it is not unnecessarily exposed to risks due to the wording of the constitution.***

<sup>13</sup> [Corporations Act 2001, s 136\(2\).](#)

<sup>14</sup> [Australian Government Department of Prime Minister and Cabinet, 'Auditor-General Act 1997', October 1997.](#) (Hereafter referred to as 'Auditor General Act 1997')

<sup>15</sup> The Treasurer will assess if the objects of the proposed subsidiary are aligned with those of the holding company.

<sup>16</sup> More information can be obtained by visiting their website at <http://www.ato.gov.au>.

*Points to be considered:*

*Does the objects clause identify and restrict the business and activities in which the company may engage?*

*What are the voting rights of members (refer section 3.2.5)?*

*Does it address the appointment and termination of directors and/or managing director (refer section 3.2.6)?*

*What is the power of directors (refer section 3.2.6)?*

*How are board resolutions made (for example, by simple majority)?*

*Have the Queensland Procurement Policy requirements been considered?*

*For a public sector company:*

*Is the Treasurer's approval required for the formation of subsidiaries and/or amendments to the constitution?*

*For a non-public sector company:*

*Is unanimous approval of the members or the approval of special resolution supported by the members representing the State required for the formation of subsidiaries and/or amendments to the constitution?*

## 3.2.5 Members

The members of a company own the company and its assets, and it must therefore have at least one member. However, the members' rights to assets and obligations towards liabilities of the company depend on the type of membership.

### Companies limited by shares

In a company limited by shares, the members of a company are its shareholders, with various rights (such as voting, receiving of dividends, sharing in surplus of assets on a winding up) and liabilities (such as pay calls if shares are partly paid). Member rights are determined by different classes of shares. Any proposed classes of shares must be addressed in the application, as well as justification where it is proposed that the State's shareholding will be a class of share with inferior rights to other classes.

Where appropriate, shares may be held in a trust deed on behalf of the State with the State being the sole beneficiary of the trust. The trustee of the trust may be a natural person (for example the Minister or chief executive), or a nominated "position" within an agency. Where the trustee is a natural person, measures should be put in place to ensure the trusteeship is transferred to a new natural person in the event of the trustee leaving the service of the agency. Irrespective of whether the trustee is a natural person or a 'position', the Australian Securities and Investments Commission (ASIC) must be informed of any change in trusteeship.

A copy of the proposed trust instrument containing the terms of the trust must be provided with the application.

### Companies limited by guarantee

A company limited by guarantee does not have shares and the company's members are not required to contribute capital while the company is operating. In the event of the company being wound up and its assets being insufficient to meet its liabilities, its members are liable to pay up to the amount specified in the members' guarantees.

*Points to be considered and addressed:*

*Companies limited by shares:*

*Who will be the members?*

*How will the shares be held for the State, that is, if a trust deed is used, who will be the trustee?*



*What will be the shareholding of each member?*

*What will be the rights of each member, that is, voting and entitlement to profits?*

*Are the rights of the class of shares to be held by the agency the same as the other members? If not, provide justification.*

*How will new members be added and how will they be removed?*

*Companies limited by guarantee:*

*Who will be the members and what is the amount of the guarantee these members have agreed to undertake?*

*If the members have guaranteed different amounts, what is the reason for this?*

*What rights do the members have under the constitution?*

*How will new members be added and how will they be removed?*

### 3.2.6 Directors (Board members)

Directors of a company have a number of duties and obligations which arise under the Corporations Act.<sup>17</sup> Typically, the directors of a company have the power, acting collectively as a 'board', to:

- manage and direct the business of the company, and
- exercise all of the company's powers, apart from those specific powers which the law or company's constitution requires to be exercised by a resolution of the company's shareholders or otherwise (such as Treasurer approval).

The role of a company's directors can be articulated as a role of overseeing, guiding and monitoring the management and strategic direction of the company.

The board of directors is not expected to be involved in day-to-day management or decision making. In most companies that conduct significant business, the power to manage the day-to-day operations of the business is typically delegated to a chief executive officer and, depending on the size of the company, to a senior management team. However, the distinction between the role of directors and management is to some extent blurred by the dual role played by the executive directors. Unlike non-executive directors, executive directors are employed by the company in a senior management position (such as chief executive officer or chief finance officer) as well as being directors of the company.

It is imperative that directors are conversant with their legal responsibilities and the civil and criminal liabilities to which they may be exposed. Directors should have the experience and skills to adequately discharge their responsibilities in the long term and in the best interests of the company.

The running of a company is multifaceted and often complex both legally and financially. The collective background of directors should be such that it represents an appropriate range of skills required for the efficient, effective and economical operation of the company. The experience of the directors should comprise sufficient skills and knowledge to be able to balance the requirements of public sector corporate governance procedures and accountability requirements with achieving the commercial objectives of the company. The collective background of directors should include both public and private sector experience.

Appendix A provides further guidance on the selection of directors.

Upon receipt of the necessary written consent to act<sup>18</sup> from a proposed director to participate on the board, appropriate checks should be undertaken in order to mitigate the risk to the State. These checks could include reference checks, criminal history checks, and confirmation that proposed directors are not prohibited from holding directorships.

<sup>17</sup> [Corporations Act 2001, Chapter 2D.](#)

<sup>18</sup> [Corporations Act 2001, s 201D.](#)

**Potential directors may be identified through a search of the Queensland Register of Nominees to Government Bodies, maintained by the Department of the Premier and Cabinet.**

**The appointment of directors, senior management and the company secretary may be considered significant appointments as per the Queensland Cabinet Handbook.**

**Ministers are required to raise all proposed appointments to government bodies, including companies, with the Premier in writing, regardless of whether they are classified as significant or not. For further details, refer to the Queensland Cabinet Handbook.**

## Governance

A key element of seeking the Treasurer's approval is an undertaking by the agency submitting the application to ensure that appropriate governance arrangements will be put in place. It is best practice to establish a Director's Code of Conduct and a Board Charter. The method by which this is achieved may vary according to the composition of the membership of the company. In an appropriate case, Treasury Policy and Partnerships: Line Agency Teams in recommending an application to the Treasurer may advocate that, as a condition of approval, a Director's Code of Conduct and a Board Charter be prepared immediately following the formation of a company. This will help to facilitate the discharge of the director's duties to the company and its members.

A company may also be subject to the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

Appendix B provides information on the duties and responsibilities, independence and conflict of interest of company directors.

Appendix C provides information on governance guidelines and requirements.

## Remuneration

Directors of public sector companies, who are not public sector officials, may be paid meeting and attendance fees. If the appointment of a director to a public sector company board is approved by legislation or other government approval process, meeting and attendance fees must be paid in accordance with the publication, *Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies*<sup>19</sup> (Remuneration Procedures). Where a director is appointed to a public sector company under another approval process, the Remuneration Procedures document may be used as a guide in determining the appropriate remuneration to be paid.

Directors who are public sector officials are generally precluded from receiving personal remuneration, other than out of pocket expenses, where the role is integral to their duties as an officer of the public sector (refer to the Remuneration Procedures).

Further information regarding remuneration is also available in the *Queensland Cabinet Handbook* and *Welcome Aboard - A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities* (Welcome Aboard).<sup>20</sup>

*The application must include:*

*The name and address for each proposed director.*

*Written consent to act as director.*

*Details of relevant professional background, skills and experience.*

*Details of other appointments.*

<sup>19</sup> Queensland Government Department of the Premier and Cabinet, 'Remuneration Procedures for Part-Time Chairs and Members of Queensland Government Bodies', September 2018.

<sup>20</sup> Queensland Government Department of the Premier and Cabinet, 'Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities', July 2010.

*Curriculum vitae that provide evidence of an ability to comply with the obligations and duties required under the Corporations Act.*

*Proposed remuneration, if any (this should be total remuneration, including benefits such as car parks, telephone allowances, etc).*

*Whether the director has any current and/or potential conflict of interest with the interests of the company.*

### 3.2.7 Company secretary

A company requires secretarial arrangements to support the long-term operations and management of the company.

The proposed company secretary must be appropriately qualified to perform the duties of the position and be conversant with corporate issues that may require consideration by the Board (for example legal, compliance and administrative requirements existing under the Corporations Act and other relevant legislation).

Upon receipt of the necessary written consent to act<sup>21</sup> from a proposed secretary, appropriate reference checks should be undertaken. Criminal history checks may be appropriate to minimise the risk to the State and confirm that the proposed secretary is not prohibited from holding the position.

*The application must include:*

*The name and address of the proposed company secretary.*

*Written consent to act as company secretary.*

*Details of relevant professional background, skills and experience.*

*Details of other appointments.*

*Curriculum vitae that provide evidence of an ability to comply with the obligations and duties required under the Corporations Act.*

*Proposed remuneration, if any (this should be total remuneration, including benefits such as car parks, telephone allowances, etc).*

*Whether the company secretary has any potential conflict of interest with the interests of the company.*

### 3.2.8 Administration

A company needs appropriate administrative arrangements for the long-term operation and management of the company.

Staff appointed to conduct the activities of a public sector company should include individuals with appropriate experience from both the public and private sector. This will ensure an appropriate mix of skills to enable adequate understanding of public sector requirements and accountability together with corporate operations and knowledge.

Details of the proposed chief executive officer (CEO) should be included in the application.

The company must also have sufficient resources and expertise to ensure that all matters of compliance for example preparation of accounts, keeping of company registers, holding of meetings and lodgement of annual returns and other ASIC documents are properly addressed. Whilst the responsibility for ensuring compliance with the above rests with the company's officers, the ability to access the records of the company aids the controlling agency's ongoing monitoring role (refer Part Three).

<sup>21</sup> Corporations Act 2001, s 204C and s 204G.

*The application must include:*

*Information about the proposed administrative arrangements for the company, including arrangements in respect of its registered office, company registers, proposed CEO, preparation of accounts, and lodgement of ASIC returns.*

*If it is proposed that the persons who establish the company will not be involved in its long-term management, details of an appropriate hand-over plan must be provided with the application to ensure that those parties responsible for the ongoing management of the company will be adequately briefed on any outstanding issues and will be able to adequately perform that management role.*

### 3.2.9 Risk assessment

Even though financial liability may be limited under a company structure, cognisance is needed of the company's obligations to the wider community. A comprehensive risk assessment will assist the Treasurer in evaluating the potential risks to the State.

The findings of a detailed risk assessment must accompany the application submitted for the Treasurer's approval. It should demonstrate that the formation of the company and its ongoing activities will not adversely affect the risk and accountability profiles of the agency and the State. The risk assessment should consider the probability of occurrence, the potential consequences if it does occur, as well as the mitigating factors and controls that will be put in place.

Useful material on risk management and assessments can be obtained from *A Guide to Risk Management*<sup>22</sup> and *Cost Benefit Analysis* guidelines that form part of the *Project Assurance Framework guidelines*,<sup>23</sup> both of which are available on the Queensland Treasury website.

Regard should also be given to the Australian and New Zealand Risk Management Standard published by Standards Australia<sup>24</sup> when preparing the risk assessment.

Where an entity is acquiring an existing company, details of searches and due diligence reviews that have been undertaken must be contained in the application.

Where an agency is proposing to use a company structure to enter into a venture with external parties, ancillary documents such as member agreements, memoranda of understanding, joint venture/operating agreements, management agreements and intellectual property licences may need to be prepared. The rights and obligations of the agency under such ancillary documents must also be included and addressed in the risk assessment (refer section 3.2.13).

*Points to be considered and addressed:*

*What are the risks?*

*What is the possibility of each of these risks occurring?*

*What are the potential consequences for each of these risks if it occurs?*

*What mitigating factors and controls are in place or will be put in place?*

### 3.2.10 Financial Viability

Financial viability (going concern concept) relates to an entity's ability to pay its debts as and when they fall due and continue to operate without any intention or necessity to liquidate or otherwise wind up its operations.

<sup>22</sup> Queensland Treasury, 'A Guide to Risk Management, July 2011.

<sup>23</sup> Queensland Treasury, 'Project Assessment Framework', July 2015.

<sup>24</sup> Standards Australia, 'Risk Management Guidelines', February 2018.

A comprehensive risk assessment (refer section 3.2.9), a strategic plan (including a high-level budget) and funding considerations will assist the Treasurer in evaluating the financial viability of the company.

## Strategic Plan

Substantive risks often lie in the conduct of the company's activities rather than the formation of the company itself. A strategic plan provides a framework and high-level budget within which the company will work, it clarifies what its strategies are and outlines the intended operational approach to be followed. It does not spell out specific activities.

A high-level strategic plan for the proposed company, including the key drivers of business, should be submitted as part of the application.

***Agencies are encouraged to conduct a sensitivity analysis and discuss the key drivers of business with the appropriate Treasury Policy and Partnerships: Line Agency Team prior to finalising the business case.***

## Funding, Guarantees and Indemnity

The provision of funding, guarantees and indemnities by the State can reduce the advantages of limited liability obtained from the company structure, by shifting the risks back to the State. The application must provide details of how the company will be funded and any financial contributions that may be required from the Government.

Where it is proposed that the State (including the agency) will be providing guarantees to support the company's obligations, full details of the guarantees, with an explanation of why they are necessary must be provided.

The application must also detail any proposed indemnities for officers of the company. Where a director is a public sector employee, it is Government policy to indemnify the officer for liabilities incurred in the performance of that person's duties, provided they act diligently and conscientiously.<sup>25</sup>

Non-public sector directors may be indemnified by the company to the extent allowed by the Corporations Act. However, it is generally not considered to be appropriate for the State Government to indemnify non-public sector directors. Directors' and officers' liability insurance from an insurance broker may be considered.

Directors may remain liable for breaches of the Corporations Act irrespective of guarantees, indemnities or insurance provided.

## Member Contributions

Although the company's members are not liable to contribute capital while the company is operating, it is common for members to make contributions to the company. These contributions may be financial, for example, by way of equity or grant funding, or non-financial, for example, the provision of staff or other resources, such as office space.

***Section 87 of the FA Act requires departments to obtain the Treasurer's approval when making an investment. Agencies are encouraged to submit their application under section 87 as part of this business case.***

*Points to be considered and addressed:*

*Does the Strategic plan include the:*

*Mission?*

*Short term and long term (three year) goals?*

*Nature of the activities?*

*Key drivers of business?*

*Resource requirements (infrastructure, human, systems, etc.)?*

<sup>25</sup> Queensland Government Public Service Commission, 'Queensland Government Indemnity Guideline', March 2014.

*Initial investment for establishing this proposed company?*

*Financial requirements (capital, operational and cash flow requirements)?*

*Measurements for success and deviation from the plan?*

*Regarding funding, guarantees and indemnity:*

*What are the expected sources of funding?*

*What financial contributions may be required from the Government?*

*Are there any proposed guarantees that the State (including the agency) may be required to provide to support the company's obligations? If so, explain why they should be provided and the potential liabilities to the State.*

*Are there any proposed indemnities that the agency or the State will be required to provide? If so, explain why they should be provided and the potential exposure to the State.*

*Regarding member contributions:*

*Will the State be making contributions to the company other than by way of equity or guarantee, for example grant funding, making staff or other resources available to the Company? If so what is the approximate monetary value of this contribution?*

*If the State is making contributions to the company, what contributions are being provided by other members of the company?*

*What are the key terms and obligations of the State and the company?*

### 3.2.11 Financial accountability

The formation of a company can, in certain instances, erode public accountability through the use of the 'corporate veil'. The Treasurer must be satisfied that the company's activities will be sufficiently accountable to the Government and the activities of the entity won't be obscured behind the 'corporate veil'.

#### Financial Reporting

Where a company is 'controlled' by an agency in the context of the Australian Accounting Standards,<sup>26</sup> the company's financial transactions and balances are required (where material) to be consolidated with the agency's financial transactions and balances in accordance with applicable Australian Accounting Standards. If an agency does not 'control' the company but has the capacity to 'significantly influence its operations', the financial results of the company (where material) should be 'equity accounted' by the agency.

Under the Corporations Act, all companies are required to prepare annual financial reports and directors' reports,<sup>27</sup> with the exception of small proprietary companies.<sup>28</sup> A member of a small proprietary company with at least 5 per cent of the votes may however give the company a direction to prepare a financial report and a directors' report for a financial year.

Financial accountability arrangements must be supported on the basis of both the costs and benefits of preparing financial reports. For example, where a company is a small proprietary limited company that undertakes limited transactions, the costs of preparing full general-purpose financial reports may outweigh the benefits. In such circumstances, arrangements may be put in place for the preparation of reduced disclosure financial reports or other reports as determined by the appropriate regulator from time to time.

<sup>26</sup> [Australian Accounting Standards Board, Accounting Standards, March 2020.](#)

<sup>27</sup> [Corporations Act 2001, Part 2M.](#)

<sup>28</sup> [Corporations Act 2001, s 45A and s 292\(2\).](#)

**Where a company is not controlled by one particular agency but is a public sector entity, the application must contain details of which agency will be responsible for financial accountability and post approval monitoring.**

## **Audit**

If the company is a public sector entity,<sup>29</sup> there are legislative requirements that the company's financial statements must be audited by the Auditor-General<sup>30</sup>. If the company is not a public sector entity, the Auditor-General may, on request of the Minister and if the company agrees to it, audit the financial statements of the company.<sup>31</sup> In circumstances that the Auditor-General has not been appointed, an auditor must be appointed to audit the annual financial report in accordance with the terms of the Corporations Act.

*Points to be considered and addressed:*

*Will the agency have control over the company (i.e. to power to govern the financial and operating policies the company so as to obtain benefits from its activity)?*

*Will general or special purpose financial statements be prepared?*

*How frequent will the results be reported to the agency?*

*What is the expected financial impact on the agency?*

*Where special purpose reporting is proposed, the application must contain:*

*the basis of reporting, such as accrual or cash, and which Australian Accounting Standards will be applied; and*

*the content and format of the reports, for example the:*

- *financial statements for the year*
- *notes to the financial statements, and*
- *director's declaration about the statements and notes.*

*Where a company is not controlled by one particular agency but is a public sector entity, include the details of which agency will be responsible for financial accountability and post approval monitoring.*

*Who will be the auditors of the company?*

## **3.2.12 Taxation**

It is important that the Treasurer is aware of the tax implications the proposed company's activities may generate and the likely tax liabilities it will incur prior to approving the formation.

A review should therefore be undertaken to identify any implications relating to:

- Goods and Services Tax (GST)
- Income Tax or National Income Tax Equivalents Regime<sup>32</sup> (NTER)
- Fringe Benefits Tax (FBT), and State legislated tax regimes.

Where potential issues are identified, solutions to the issues are to be proposed.

<sup>29</sup> Queensland Department of Premier and Cabinet, 'Auditor-General Act 2009', May 2009. (Hereafter referred to as 'Auditor-General Act 2009')

<sup>30</sup> Auditor-General Act 2009, s 34.

<sup>31</sup> Auditor-General Act 2009, s 36.

<sup>32</sup> Queensland Treasury, National Competition Policy and Queensland Local Government policy statement, July 1996.

The formation of the company may necessitate registration of the company as a Government-related entity<sup>33</sup> for GST purposes. The Australian Taxation Office requires proof of identity that the company is a government related entity which can only be provided by the Director, Commonwealth Taxes Unit, Queensland Treasury.

*Points to be considered and addressed:*

*Has a tax review been done to identify any implications relating to taxation and how they will be addressed?*

*Will the company be registered as a Government-related entity for GST purposes? Once the Treasurer has approved the formation of the company, to register it as a government related entity, the Australian Taxation Office requires proof of identity that the entity is a government related entity.*

### 3.2.13 Ancillary agreements

In some instances, other agreements may be proposed as part of the overall plan to form a company. These may be integral to understanding the rights, obligations and risks to which the Government may be exposed, for example, when it is proposed that the company will be a trustee of a Trust. In such instances, it is critical that the terms of such ancillary agreements are consistent with the long-term objectives and constitution of the company and the Government's current risk parameters.

Where there are proposed ancillary agreements, appropriate legal advice should be sought to ensure that these agreements remain consistent with the objectives of the company and the constitution and that member's rights have not been diminished as a result these agreements.

As part of the risk assessment (refer section 3.2.9) any proposed agreements in relation to the company's management and operations and any other documents relating to its activities must be examined and provided with the application, including an analysis of how these agreements will operate and be administered.

*Consider the following:*

*Are any ancillary agreements in line with the long-term objectives and constitution?*

*Are all ancillary agreements included in this application?*

### 3.2.14 Other issues

All issues specifically agreed between the Treasury Policy and Partnerships: Line Agency Team and the applicant during the preliminary business case and the application process must be addressed in the application.

## 3.3 Acquiring an interest in an existing company

Additional information may be included for consideration by the Treasurer where an agency is acquiring an interest in an existing company. The additional information is primarily to determine the risk profile of the company. Risks identified during the risk assessment or due diligence process should be quantified where possible, and the application must specify how these risks will be addressed.

Section 87 of the FA Act requires a department to obtain the Treasurer's approval to make an investment,<sup>34</sup> for example, obtain a share in a company.

Additional information may be required at the discretion of Treasury.

*Consideration points:*

*From whom is the company being acquired?*

*Why is the company being acquired?*

<sup>33</sup> Goods and Services Tax Act 1999.

<sup>34</sup> Example: acquire an interest in a company and expecting some benefit or interest to flow from the money given.



*Is the company a going concern?*

*What are the existing governance structures?*

*Consider the following for inclusion if appropriate:*

*A brief history of the company.*

*The latest audited financial statements together with a review of the financial performance of the company, including accounting and tax issues confronting the company.*

*The results of a comprehensive due diligence review.*

*The details of the arrangements by which the ownership will be acquired, including any proposed contracts.*

*Any possible conflicts of interest related to the acquisition.*

*A cost benefit analysis to support the acquisition.*

### 3.4 Notification of formation

Following a Treasurer's approval, the Auditor-General Act requires the appropriate Minister to provide written notice to the Auditor-General and the Treasurer once a public sector entity is established or once an entity becomes a public sector entity. Failure to notify the Auditor-General and the Treasurer is a breach of this legislation and could potentially result in this matter being reported to Parliament.

The Treasurer should be notified by completion of the *Notification of Company Details Form* included in Appendix E to these Guidelines. The completed form should be signed by the relevant officer and sent to the **Assistant Under Treasurer, Budget Strategy and Financial Reporting, Queensland Treasury**. This will allow Treasury to maintain appropriate records of all Queensland public sector companies.

As indicated above, a formal letter from the relevant Minister to the Auditor-General is needed to notify of the establishment of a public sector entity.

## 4.0 PART THREE: POST APPROVAL MONITORING

### 4.1 Purpose of post approval monitoring

Post approval monitoring by the agency aims to ensure that the risk profile, financial viability and accountability structure included in the business case when the Treasurer approved the formation of the company remains substantially unchanged for as long as the company remains a public sector company.

### 4.2 Post approval monitoring

A requirement integral to post-approval monitoring is that the controlling agency, or where the company is not controlled by one particular agency, the nominated agency (refer section 3.2.11), ensures that the company has documented policies and procedures in place to ensure that it:

- complies with all the conditions on which the Treasurer's approval was based
- consults with the Treasurer where any changes in the company's circumstances or status may lead to a material departure from the terms of the original approval
- does not amend its constitution contrary to the approval requirements as stipulated in the original approval
- meets obligations in the Board Charter and reviews the Charter annually
- has a Code of Conduct that deals with any conflicts that may arise between an officer's duties as a government officer and as a company director<sup>35</sup>
- exercises good corporate governance and accountability, including high standards of internal control,<sup>36</sup> ethical practices and external reporting
- regularly reviews its financial and operational performance to ensure that projected performance targets, business plans and agency objectives are met
- regularly reviews its financial position to ensure that it remains solvent
- reviews and assesses any change in financial or other risks<sup>37</sup> that may impact on the agency or the Government, and
- monitors the performance of the board of directors, secretary and other officers in the discharge of their duties and responsibilities.

Where the company is a public sector company, it should provide all directors appointed to the board with a copy of the publication *Welcome Aboard - A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities* issued by the Department of the Premier and Cabinet.

### 4.3 Post approval notifications

As a mechanism to assist with overseeing all Queensland public sector related companies, Queensland Treasury maintains a central register detailing ownership and other relevant information. To ensure this central register remains current, an updated *Notification of Company Details Form* included in Appendix E to these Guidelines should be submitted once any of the information collected has changed.

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<sup>35</sup> Useful reference material in relation to the preparation of a code of conduct is available from the Australian Institute of Company Directors (AICD). Consideration should also be given to the *Public Sector Ethics Act 1994*, by which all public servants are bound.

<sup>36</sup> Queensland Treasury, 'Financial Accountability Handbook and Audit Committee Guidelines: Improving Accountability and Performance', June 2012.

<sup>37</sup> Documents to consult, irrespective of whether or not the company is government controlled or not, are the Standards on Risk Management that can be obtained from at [www.saiglobal.com](http://www.saiglobal.com), and the *Financial and Performance Management Standard 2019*, the *Financial Accountability Handbook* and *A Guide to Risk Management* that can be obtained from [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au)

## **5.0 PART FOUR: CHANGE IN OWNERSHIP OR WINDING UP OF COMPANY**

When a company is transferred to another agency or significant change in ownership or control occurs, all agencies involved need to ensure the process is undertaken in a timely manner and that Treasury and the auditors are informed of the change. Similarly, where a company is defunct or is no longer required for its intended purpose, the member agency should take steps to wind up or deregister the company and inform the Treasurer.

This part of the Guidelines provides procedures and points to consider when a decision has been made to change the ownership of a company, or to wind the company up and deregister it.

### **5.1 Transfer of companies between departments - business case to be prepared**

When a company is transferred between departments (such as following a machinery of Government change or other Government decision), the receiving department is required to prepare a modified business case within four months of the transfer to obtain the Treasurer's approval to continue to operate the company. The purpose of the modified business case is to reassess the ongoing need for the company and the impact of its associated risks.

Note, however, that depending upon the contents of the modified business case, the Treasurer may request that a department prepares a full business case before approval to continue to operate the company is granted.

The business case for a company transfer under a machinery of Government change or other Government decision should include the following information:

#### **5.1.1 Reasons for the transfer of the company**

Provide details of the reason for the company transferring between departments.

State the date the Treasurer previously approved the establishment or acquisition of the company by the transferring department.

#### **5.1.2 Purpose of the company**

A statement of the purpose of the company should be prepared, including an assessment of the ongoing need for the company. It should include a statement as to whether the company will continue in its previous capacity. If it is not, the business case should outline how the purpose of the company is to change. Depending upon the significance of the change, a full business case may be necessary. Refer to section 2.3.1 for more information.

#### **5.1.3 Financial viability**

An assessment of the ongoing financial viability of the company should be provided, including any funding required from Government. Refer to section 3.2.10 for more information.

#### **5.1.4 Strategic risk assessment**

The department should provide details of the risks involved in operating the company. This would include details of any risks to the State and how they will impact on the department including reputation and political risks, whether indemnities or guarantees have been provided to the company, contingencies and legal liabilities. Refer to sections 2.3.3 and 3.2.9 for more information.

#### **5.1.5 Governance arrangements**

Governance arrangements for the company must be provided. As a minimum, the modified business case must include:

- details of the company shareholders/members, directors and company secretary
- details of any subsidiary companies
- if the company is limited by guarantee, the details of the members' guarantees

- details of what reporting will be provided to the shareholders/members and the department, and
- where available, a copy of the original business case when the company first became a public sector company.

Refer to sections 2.3.4, 3.2.5, 3.2.6, 3.2.7, and 3.2.11 for more information.

If a change to the company's constitution is required, approval must be obtained in accordance with section 3.2.4.

## 5.2 Transfer or change of ownership – pre-transfer procedures

The following procedures are to be followed when a company is transferred between agencies or where there is a change in ownership or control of the company:

- where machinery of Government changes give rise to the transfer of a company from one agency to another, the agencies affected by the transfer should commence negotiations as a matter of priority
- the onus is presumed to be on the receiving agency to expedite the transfer, as issues that arise will generally be due to the receiving agency ensuring appropriate processes/infrastructure are in place to accommodate the new company
- if the negotiation and transfer of the company is not completed within two months of a machinery of Government change or prior to the end of the financial year, the Treasurer should be notified and provided with reasons for the delay and the anticipated timeframes to complete the transfer. A business case seeking Treasurer's approval as outlined in section 5.1 above must be submitted within four months of the transfer, and
- if there is to be a change to the company's constitution, there should be timely consultation with and, where necessary, approval from the Treasurer for the proposed changes (refer section 3.2.4).

## 5.3 Transfer or change of ownership – post-transfer procedures

Once the transfer has taken place:

- appropriate forms should be completed and forwarded to the Australian Securities and Investments Commission (ASIC) within the specified timeframe. (Currently companies have 28 days from a change occurring to lodge the appropriate forms. In a machinery of Government change the final determination of the assets to be transferred occurs when the Machinery of Government Transfer Sign-off Form<sup>38</sup> is signed by both accountable officers. The appropriate forms should be lodged with ASIC within 28 days of signing this form.), and
- a completed *Notification of Company Details Form* available in Appendix E should be provided to Treasury for update to the central register of public sector companies.

## 5.4 Defunct or insolvent companies

A company which has ceased to carry on business can in some cases be deregistered without the need for a winding up process. A member agency may act to wind up a solvent company's affairs through the appointment of a liquidator or alternatively proceed directly to deregistration if the relevant requirements are met. Further information is available from ASIC's website at [www.asic.gov.au](http://www.asic.gov.au)

Arrangements must be made for a final set of financial statements to be prepared and signed-off by the directors and the auditor prior to the cessation of their responsibilities.

Where a company is found to be insolvent or likely to become insolvent there are many alternative forms of external administration available. **Given the potential civil and criminal liability to company officers, as well as the risk to the State of association with a company that operates whilst insolvent, agencies should immediately consult the appropriate Treasury Policy and Partnerships: Line Agency Team when there is an indication that this is a risk.** Agencies should also immediately seek legal advice and advice regarding the

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<sup>38</sup>Queensland Treasury, 'Guidelines for Machinery of Government (MOG) Changes', April 2019.

appointment of an insolvency expert should there be doubt as to the ability of the company to operate as a going concern.

On deregistration or the winding up of a company, the member agency must liaise with the appropriate Treasury Policy and Partnerships: Line Agency Team and forward notification to the Treasurer and the auditor of the company.

## 5.5 Notification of changes

Treasury maintains a central register of all Queensland public sector related companies detailing ownership and other relevant information. To ensure this central register remains current, an updated *Notification of Company Details Form* included in Appendix E to these Guidelines should be submitted within 28 days following changes to the company details.

The Treasurer and the Auditor-General must also be informed of significant changes to the ownership or other activities of the company, for example, shareholding or deregistration. A *Checklist to Notify Relevant Parties of Post Approval Changes to a Public Sector Company* in Appendix F to these Guidelines has been developed to assist agencies in this regard.

## APPENDICES

### A. Director selection considerations

Amongst its many responsibilities the board of directors is responsible for overseeing and challenging management in its performance. In part, the board performs an independent check on management action, and through good governance should improve the effectiveness of the company, its management and ultimately enhance the credibility of the company.

In the private sector, there have been examples of executive directors becoming too closely aligned with the management of a company thereby diminishing their ability to objectively analyse management actions, and their independent business judgment. An independent board often strengthens a corporation's integrity to its stakeholders.

Whilst the benefits of the inclusion of directors who are independent from the management of the entity and the controlling entity are clear, this must be weighed up against the additional costs associated with this structure. However, only in circumstances where costs significantly outweigh benefits, should consideration be paid to not including independent representation on the board.

Where an employee of a public sector agency is appointed to the board of a controlled company of that agency, difficulties may arise for the officer in resolving tensions between his/her various roles.

Where the public sector official is an accountable officer, being a representative on the board of a controlled entity may assist him/her to manage all activities of the agency and facilitate the achievement of his/her functions and duties as accountable officer. However, as there is potential for a conflict of roles, an accountable officer should not be on a board of a corporate entity controlled by his/her agency without adequate justification for the appointment being made and a code of conduct being prepared, particularly where the company is reliant on funding from the agency.

It is important that as soon as practicable following approval of the formation of a company, a code of conduct is prepared detailing the principles and protocols to be applied in treating any conflict that may arise between an officer's duties as a government officer and their duties as a board director under the *Corporations Act 2001* (Corporations Act).

## B. Duties of directors

In managing the business of a company, each of its directors is subject to a wide range of duties under the *Corporations Act 2001* (Corporations Act) and other laws. Given the social and legal responsibilities of directors, the Corporations Act<sup>39</sup> formulates duties and responsibilities of directors. These relate to:

- acting in good faith
- acting in the best interest of the company
- avoiding conflict between the interests of the company and the director's interest;
- acting honestly
- exercising care and diligence
- preventing the company trading while it is unable to pay its debts, and
- if the company is being wound up – reporting to the liquidator on the affairs of the company and assisting the liquidator (by, for example, giving the liquidator any records of the company that the director has).

Information regarding the duties of members of Government boards is contained in the publication *Welcome Aboard - A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities* (Welcome Aboard) which can be located on the Department of the Premier and Cabinet internet site at [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au). All directors of public sector companies should be provided with a copy of this document.

### Conflict of Interest

Conflicts of interest may arise in a variety of ways. For example, in the case of Government officials, conflicts arise as a result of holding an official position which carries responsibility for some aspect of the operation or affairs of the company, or over policy which affects the company. It may also occur as a result of being on the Board of another corporation or being an employee of or consultant to another corporation having either dealings with the company or an interest in its activities. In such circumstances, the director who has a conflict must:

- declare the nature of the conflict to the board of directors
- not have access to information of the company in relation to the matter in which he/she has the conflict
- absent himself or herself from all meetings of the company and board at which the matter he/she has, or may have, a conflict is discussed
- not seek, directly or indirectly, to influence the outcome of any deliberations by the company or any of its officers in relation to any matter to which he or she may have a conflict
- not participate in any way in the decisions of the company concerning matters involving the other organisation which the director represents
- not participate in any way in the decisions of the board where those matters affect, or could affect, the corporation
- not execute or sign any contract on behalf of the company concerning matters involving the other organisation which the director represents, and
- disclose interests in contracts with the company and potential conflicts through offices or property held.

A director who fails to perform their duties may:<sup>40</sup>

- be guilty of a criminal offence with a penalty of up to \$200,000 or imprisonment of up to 5 years, or both

<sup>39</sup> [Corporations Act 2001, s 180 – 184.](#)

<sup>40</sup> [Corporations Act 2001, s 588G, 596, and 1317H.](#)

- contravene a civil penalty provision (and the Court may order the person to pay to the Commonwealth an amount of up to \$200,000)
- be personally liable to compensate the company or others for any loss or damage they suffer, and
- be prohibited from managing a company.

A director's obligations may continue even after the company has been deregistered.



## C. Governance guidelines and requirements

Directors should ensure that a governance framework appropriate for the company is established. Key components of the framework should include:

- concepts of accountability, due care and public defensibility
- a performance management system
- a risk management system, and
- a cost-effective internal control structure

Cognisance should be taken of the 8 Corporate Governance Principles of the ASX:<sup>41</sup>

1. Lay solid foundations for management and oversight

*Companies should establish and disclose the respective roles and responsibilities of the board and management and how their performance is monitored and evaluated.*

2. Structure the board to be effective and add value

*Companies should have a board of an appropriate composition, size and commitment to enable it to discharge its duties effectively.*

3. Instil a culture of acting lawfully, ethically and responsibly

*Companies should act lawfully, ethically and responsibly.*

4. Safeguard integrity of corporate reports

*Companies should have formal rigorous processes that independently verify and safeguard the integrity of their financial reporting.*

5. Make timely and balanced disclosure

*Companies should make timely and balanced disclosure of all material matters concerning the company.*

6. Respect the rights of shareholders

*Companies should respect the rights of shareholders and facilitate the effective exercise of those rights.*

7. Recognise and manage risk

*Companies should establish a risk management framework and periodically review the effectiveness of that framework.*

8. Remunerate fairly and responsibly

*Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.*

Standards Australia has published a series of corporate governance standards (AS8000 to 8004). Copies of these standards can be purchased from [www.saiglobal.com](http://www.saiglobal.com).

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<sup>41</sup> ASX Corporate Governance Principles and Recommendations, Australian Securities Exchange, 2019.

## D. Issues to be considered and addressed and/or included in the application to the Treasurer

<b>PRELIMINARY CONSULTATION</b>	
<p><b>Purpose of the proposed company</b> (2.3.1)</p>	<p>What are the specific objectives and desired outcomes of the proposed company?</p> <p>What will be the main activity of the company?</p> <p>Does this activity form part of a larger project or program? If so, what is the purpose of the larger project or program and what is the role of the company?</p> <p>What is the proposed life span of the company? Is it intended to have a limited existence, for example, to construct an asset or to carry out a specific project?</p> <p>Will there be any ongoing interactions between the agency and company in the project or program other than for monitoring purposes? If so, what will these interactions be?</p>
<p><b>Reasons for the use of a company structure</b> (2.3.2)</p>	<p>Why can this activity not be undertaken within the operational boundaries of the agency?</p> <p>To what extent will this activity overlap with the normal day-to-day activities of the agency? If there is potential overlap, what steps will be taken to avoid duplication?</p> <p>For each of the other government structures mentioned above, why can the structure not be used for this specific activity?</p> <p>How does establishing a separate body justify the investment, additional staff, financial and other resources that may be required?</p> <p>Why is a company structure considered the most appropriate?</p> <p>If the activity to be undertaken by the proposed company is a commercial activity, why can it not be undertaken by the private sector (if necessary, on a fee for service basis?)</p>
<p><b>Strategic Risk Assessment</b> (2.3.3)</p>	<p>How will the company be funded for both establishment and ongoing operations?</p> <p>When is the company expecting to reach break-even point or deliver a return on investment?</p> <p>Will the company be viable over the long term?</p> <p>What, if any, indemnities or guarantees are to be provided to the company or its officers?</p> <p>What are the risks to the State in forming the company? (Consider risks such as reputation and political risks, financial contingencies and legal liabilities)</p>
<p><b>Proposed oversight arrangements</b> (2.3.4)</p>	<p>Who will be the designated shareholders?</p> <p>Will there be dual or multiple ownerships? If so, what will be the different shareholdings?</p> <p>Will there be multiple entity shareholding? If so, to whom will the responsibility be assigned for effective whole-of-Government coordination?</p> <p>How will the board be structured?</p> <p>What will be the decision making process (for example, simple majority) of the board?</p> <p>What will be the powers of the establishing agency over the company?</p>

	<p>Does the proposed board structure include members with <u>public sector</u> knowledge and experience?</p> <p>Does the proposed board structure include members with <u>private sector</u> knowledge and experience?</p> <p>What other 'Public Sector Acts, Regulations and/or policies will be applicable to the company and how will these improve or impact on accountability and performance?</p> <p>Will the company be required to report to and/or consult with the relevant Minister or agency on strategic issues?</p>
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<b>BUSINESS CASE</b>	
<p><b>Proposed name and type of company</b> (3.2.3)</p>	<p>The application <u>must</u> include:</p> <p>What is the proposed name of the company?</p> <p>Does the name comply with Schedule 6 of the Corporations Regulations?</p> <p>What is the proposed type of company?</p> <p>Why was the proposed type of company selected?</p>
<p><b>Constitution</b> (3.2.4)</p>	<p>Does the objects clause identify and restrict the business and activities in which the company may engage?</p> <p>What are the voting rights of members (refer section 3.2.5)?</p> <p>Does it address the appointment and termination of directors and/or managing director (refer section 3.2.6)?</p> <p>What is the power of directors (refer section 3.2.6)?</p> <p>How are board resolutions made (for example, by simple majority)?</p> <p>Have the Queensland Procurement Policy requirements been considered?</p> <p>For a public sector company:</p> <p>Is the Treasurer's approval required for the formation of subsidiaries and/or amendments to the constitution?</p> <p>For a non-public sector company:</p> <p>Is unanimous approval of the members or the approval of special resolution supported by the members representing the State required for the formation of subsidiaries and/or amendments to the constitution?</p>
<p><b>Members</b> (3.2.5)</p>	<p><u>Companies limited by shares:</u></p> <p>Who will be the members?</p> <p>How will the shares be held for the State, that is, if a trust deed is used, who will be the trustee?</p> <p>What will be the shareholding of each member?</p> <p>What will be the rights of each member, that is, voting and entitlement to profits?</p> <p>Are the rights of the class of shares to be held by the agency the same as the other members? If not, provide justification.</p> <p>How will new members be added and how will they be removed?</p>

	<p><u>Companies limited by guarantee</u></p> <p>Who will be the members and what is the amount of the guarantee these members have agreed to undertake?</p> <p>If the members have guaranteed different amounts, what is the reason for this?</p> <p>What rights do the members have under the constitution?</p> <p>How will new members be added and how will they be removed?</p>
<p><b>Directors</b> <b>(3.2.6)</b></p>	<p>The application <u>must</u> include:</p> <p>The name and address for each proposed director</p> <p>Written consent to act as director</p> <p>Details of relevant professional background, skills and experience</p> <p>Details of other appointments</p> <p>Curriculum vitae that provide evidence of an ability to comply with the obligations and duties required under the <i>Corporations Act 2001</i> (Corporations Act)</p> <p>Proposed remuneration, if any (this should be total remuneration, including benefits such as car parks, telephone allowances, provision of tablets/laptops etc), and</p> <p>Whether the director has any current and/or potential conflict of interest with the interests of the company.</p>
<p><b>Company Secretary</b> <b>(3.2.7)</b></p>	<p>The application <u>must</u> include:</p> <p>The name and address of the proposed company secretary</p> <p>Written consent to act as company secretary</p> <p>Details of relevant professional background, skills and experience</p> <p>Details of other appointments</p> <p>Curriculum vitae that provide evidence of an ability to comply with the obligations and duties required under the Corporations Act</p> <p>Proposed remuneration, if any (this should be total remuneration, including benefits such as car parks, telephone allowances, etc), and</p> <p>Whether the company secretary has any potential conflict of interest with the interests of the company.</p>
<p><b>Administration</b> <b>(3.2.8)</b></p>	<p>The application <u>must</u> include:</p> <p>Information about the proposed administrative arrangements for the company, including arrangements in respect of its registered office, company registers, proposed CEO, preparation of accounts, and lodgement of Australian Securities and Investment Commission (ASIC) returns, and</p> <p>If it is proposed that the persons who establish the company will not be involved in its long-term management, details of an appropriate hand-over plan must be provided with the application to ensure that those parties responsible for the ongoing management of the company will be adequately briefed on any outstanding issues and will be able to adequately perform that management role.</p>
<p><b>Risk Assessment</b> <b>(3.2.9)</b></p>	<p>What are the risks?</p> <p>What is the possibility of each of these risks occurring?</p> <p>What are the potential consequences for each of these risks if it occurs?</p>

	What mitigating factors and controls are in place or will be put in place?
<b>Financial viability (3.2.10)</b>	<p>Does the Strategic plan include the:</p> <p>Mission?</p> <p>Short term and long term (three year) goals?</p> <p>Nature of the activities?</p> <p>Key drivers of business?</p> <p>Resource requirements (infrastructure, human, systems, etc.)?</p> <p>Initial investment for establishing this proposed company?</p> <p>Financial requirements (capital, operational and cash flow requirements)?</p> <p>Measurements for success and deviation from the plan?</p> <p>Regarding funding, guarantees and indemnity:</p> <p>What are the expected sources of funding?</p> <p>What financial contributions may be required from the Government?</p> <p>Are there any proposed guarantees that the State (including the agency) may be required to provide to support the company's obligations? If so, explain why they should be provided and the potential liabilities to the State.</p> <p>Are there any proposed indemnities that the agency or the State will be required to provide? If so, explain why they should be provided and the potential exposure to the State.</p> <p>Regarding member contributions:</p> <p>Will the State be making contributions to the company other than by way of equity or guarantee, for example grant funding, making staff or other resources available to the Company? If so what is the approximate monetary value of this contribution?</p> <p>If the State is making contributions to the company, what contributions are being provided by other members of the company?</p> <p>What are the key terms and obligations of the State and the company?</p>
<b>Financial Accountability (3.2.11)</b>	<p>Will the agency have control over the company (i.e. to power to govern the financial and operating policies the company so as to obtain benefits from its activity)?</p> <p>Will general or special purpose financial statements be prepared?</p> <p>How frequent will the results be reported to the agency?</p> <p>What is the expected financial impact on the agency?</p> <p>Where special purpose reporting is proposed, the application must contain:</p> <p>the basis of reporting, such as accrual or cash, and which Australian Accounting Standards will be applied; and</p> <p>the content and format of the reports, for example the:</p> <ul style="list-style-type: none"> <li>- financial statements for the year</li> <li>- notes to the financial statements, and</li> <li>- director's declaration about the statements and notes.</li> </ul>

	<p>Where a company is not controlled by one particular agency but is a public sector entity, include the details of which agency will be responsible for financial accountability and post approval monitoring.</p> <p>Who will be the auditors of the company?</p>
<p><b>Taxation (3.2.12)</b></p>	<p>Has a tax review been done to identify any implications relating to taxation and how they will be addressed?</p> <p>Will the company be registered as a Government-related entity for GST purposes? Once the Treasurer has approved the formation of the company, the Australian Taxation Office requires proof of identity that the entity is a government related entity to register it as a government related entity.</p>
<p><b>Ancillary agreements (3.2.13)</b></p>	<p>Are any ancillary agreements in line with the long-term objectives and constitution?</p> <p>Are all ancillary agreements included in this application?</p>
<p><b>Acquiring an interest in a company (3.3)</b></p>	<p>From whom is the company being acquired?</p> <p>Why is the company being acquired?</p> <p>Is the company a going concern?</p> <p>What are the existing governance structures?</p> <p>Consider the following for inclusion if appropriate:</p> <p>A brief history of the company</p> <p>The latest audited financial statements together with a review of the financial performance of the company, including accounting and tax issues confronting the company</p> <p>The results of a comprehensive due diligence review</p> <p>The details of the arrangements by which the ownership will be acquired, including any proposed contracts</p> <p>Any possible conflicts of interest related to the acquisition, or</p> <p>A cost benefit analysis to support the acquisition.</p>

## E. Notification of company details form

This form is to be completed when a company is established, there is a change in company details (including change in ownership) and when the company has been wound up. On initial notification of company details all applicable sections on the form should be completed. If notifying of a change to company details then complete the relevant section only. **The completed form is to be signed by the Accountable Officer/Chief Executive Officer or Authorised delegate and forwarded to the Assistant Under Treasurer, Budget Strategy and Financial Reporting, Queensland Treasury, via GPO Box 611, Brisbane 4001 or [fmregistrations@treasury.qld.gov.au](mailto:fmregistrations@treasury.qld.gov.au).**

Company Details		
Company Name*:		
Company Address:		
Company Contact Officer*:		
Contact Officer Phone No.*:		
Contact Officer Email*:		
Date of Incorporation:		
Date of Treasurer's Approval^		
Date of Wind Up:		
Responsible Agency: <sup>1</sup>		
Change of Company Name		
New Company Name		
Previous Company Name		
Date of Change of Name^		
Shareholder Details		
Shareholder Name	Share Type	Quantity Held
Subsidiary Company Details (please submit separate forms for each subsidiary)		
Subsidiary Company Name	Share Type	Quantity Held

.....  
Signature of Accountable Officer/CEO  
or Authorised Delegate

.....  
Date

\* These details must be completed

<sup>1</sup> Refer to section 3.2.11

<sup>^</sup> Include copy of Treasurer's Approval or Certificate of Registration on Change of Name



## F. Post approval checklist

### Checklist to Notify Relevant Parties of Post Approval Changes to a Public Sector Company

This checklist has been developed for internal use to keep other parties such as Treasury and the Auditor-General informed of changes that occur in ownership or other activities of the company after formation or acquisition.

<i>A Yes response in the checklist requires notification and where appropriate relevant information to be forwarded.</i>	YES	NO	N/A
<b>Changes to be Notified to the Treasurer</b>			
Is there a proposed change in the company's circumstances or status which may lead to a material departure from the terms of the original approval? (Prior approval required from the Treasurer.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a proposal to amend the objects of company set out in its constitution? (Prior approval required from the Treasurer.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a proposal for the company to establish a subsidiary? (Prior approval required from the Treasurer.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a proposal for appointment or removal of directors of the company?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the transfer of a public sector company to another entity not been completed within two months of commencement of the transfer? (Advise Treasurer of the reasons for the delay and the anticipated timeframe to complete the transfer.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Changes to be Notified to the Treasurer and Auditor-General</b>			
Has the company's status changed from a small proprietary limited company changed to a large proprietary limited company or vice versa*? (Provide details of how the reporting obligations under the <i>Corporations Act 2001</i> will be satisfied.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the shareholdings or memberships of the company changed in a manner which will affect the government's control or influence in relation to the company?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the company been deregistered or wound up?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Changes to be Notified to Treasury Department</b>			
Have any of the changes described on the Notification of Company Details form contained in Appendix E of the Guidelines occurred? (Treasury to be notified via <a href="mailto:ymbregistrations@treasury.qld.gov.au">ymbregistrations@treasury.qld.gov.au</a> attaching the completed and signed Notification of Company Details form.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*In terms of section 45A of the *Corporations Act 2001*.

## G. Useful references

### Specific legislation and documents referenced in these Guidelines

Australian Government Office of Parliamentary Counsel, Canberra

[www.comlaw.gov.au](http://www.comlaw.gov.au)

*Corporations Act 2001 (Commonwealth)*

Department of the Premier and Cabinet

[www.premiers.qld.gov.au](http://www.premiers.qld.gov.au)

*Public Interest Map policy*

*Queensland Cabinet Handbook*

*Queensland Register of Nominees to Government Bodies*

*Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies*

*Welcome Aboard – A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities*

Office of Queensland Parliamentary Counsel

[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

*Financial Accountability Act 2009*

*Financial and Performance Management Standard 2019*

Public Service Commission

[www.psc.qld.gov.au](http://www.psc.qld.gov.au)

*Queensland Government Indemnity Guideline*

Queensland Treasury

[www.treasury.qld.gov.au](http://www.treasury.qld.gov.au)

*Financial Accountability Handbook*

*Audit Committee Guidelines: Improving Accountability and Performance June 2012*

Standards Australia

[www.standards.org.au](http://www.standards.org.au)

*Corporate Governance Standards (AS8000-8004)*

*Risk Management Standard (AS4360)*

### Useful web sites

Australian Institute of Company Directors

[www.companydirectors.com.au](http://www.companydirectors.com.au)

The Australian Institute of Company Directors is Australia's professional organisation for Directors providing education, policy and advocacy.

Australian Securities and Investments Commission

[www.asic.gov.au](http://www.asic.gov.au)

The Australian Securities and Investments Commission is responsible for enforcing and regulating company and financial services laws.

Australian Stock Exchange

[www.asx.com.au](http://www.asx.com.au)

ASX operates Australia's primary national stock exchange for equities, derivatives and fixed interest securities. A range of guidance and educational material is available on this web site including a set of guidelines, *Principles of Good Corporate Governance and Best Practice Recommendations*.

Chartered Secretaries Australia

[www.csaust.com](http://www.csaust.com)

Chartered Secretaries Australia is a membership and education body for governance professionals in Australia. The website provides a range of technical information and support in governance and corporate administration.

CPA Australia

[www.cpaaustralia.com.au](http://www.cpaaustralia.com.au)

CPA Australia is a professional accounting body. The website provides a range of technical guidance on topics including reporting, audit and corporate governance.

Chartered Accountants Australia and New Zealand

[www.charteredaccountants.com.au](http://www.charteredaccountants.com.au)

ICAA is a professional accounting body. The website provides a range of technical guidance on topics including reporting, audit and corporate governance.

Queensland Audit Office

[www.qao.qld.gov.au](http://www.qao.qld.gov.au)

The Queensland Audit Office (QAO) assists the Auditor-General of Queensland in discharging his legislated responsibilities to provide independent audit services to the Queensland Parliament. The website contains a number of best practice guidelines.

Queensland Treasury

[www.treasury.qld.gov.au](http://www.treasury.qld.gov.au)

Treasury provides core economic and financial policy advice to the Queensland Government, as well as services to the community, to enhance the State's financial position and economic performance, supporting sustainable long-term economic growth.

