

# Constitution and replaceable rules

This is **Information Sheet 23 (INFO 23)**.

A company's internal management may be governed by:

- provisions of the *Corporations Act 2001* that apply to the company - known as replaceable rules
- a constitution, or
- a combination of both.

## Constitution

The constitution is a contract between:

- the company and each member
- the company and each director
- the company and the company secretary, and
- a member and each other member.

A company can adopt a constitution before or after registration. If it is adopted before registration, each member must agree (in writing) to the terms of the constitution. If a constitution is adopted after registration, the company must pass a special resolution to adopt the constitution.

A company can change or repeal its constitution by passing a special resolution. A special resolution needs at least 28 days notice for publicly listed companies and 21 days notice for other company types. For the resolution to pass, at least 75% of the votes cast must be in favour.

Public companies that have changed or repealed their constitution, and proprietary companies that have applied to change to a public company and their application has yet to be determined, are required to lodge a [Form 205 Notification of resolution](#).

Some not-for-profit companies must have specific clauses in their constitution for tax concessions. Visit the [Australian Taxation Office](#) (ATO) for more information.

## Which companies need a constitution?

The following companies must be governed by a constitution:

- 'No Liability' public companies
- 'special purpose companies' that want a reduced annual review fee.

A proprietary company (that is a special purpose company) must have a constitution. It doesn't need to be lodged with us, but a copy must be kept with the company's records.

A company must provide a current copy of the constitution to any member who requests it within seven days. If a fee is charged, the constitution must be provided within seven days of payment.

## Replaceable rules

Replaceable rules are in the Corporations Act and are a basic set of rules for managing your company. If a company doesn't want to have a constitution, they can use the replaceable rules instead.

Replaceable rules do not apply to a proprietary company if the same person is the sole director as well as the sole shareholder.

Replaceable rules outlined details the rules outlined in the Corporations Act and which section they're in. The content in each of those sections applies as the replaceable rule.

If a company wants to change or remove a replaceable rule, they will need to have a constitution that outlines the changes.

## Related link

› [Checklist for registering a company.](#)

## Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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