

## Article Information

Authors: Mark Williamson, Tom Kaldis

Service: Capital Markets & Capital Raisings, Corporate & Commercial, Corporate Governance, Foreign Investment & Trade, Mergers & Acquisitions, Private Equity & Venture Capital

Sector: Financial Services

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## ASIC Blitz - Are you in breach of your obligation to file annual financial reports with ASIC?

**ASIC has launched a blitz on this often overlooked regulatory requirement. In addition, to announcing that ASIC will target financial statement filing breaches as part of its enforcement priorities for 2026, [ASIC has just announced](#) that it has hit 12 companies with infringement notices of at least \$187,800 each, totalling over \$2.2 million.**

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**In our experience, two major reasons why companies fail to file their financial statements with ASIC are:**

- The company has transitioned from being within the “small” proprietary company exemption to being “large”, without realising they have triggered the filing obligation; and
- Foreign owned corporations and registered foreign companies mistakenly believe that the “small” proprietary company exemption applies to them, when it does not apply.

We do not recall ASIC previously enforcing this law with any vigour, other than when a company had otherwise come to the attention of ASIC. It seems this blitz is due to ASIC using its data analytics technology to flag companies that are non-compliant, rather than because anyone has complained about particular companies not complying with these rules. With data analytics technology, this will now be low hanging fruit for ASIC and we are expecting enforcement actions to increase.

### **Is this a good use of ASIC’s regulatory firepower?\***

That’s an interesting question and one that causes you to ponder the policy behind the requirement to file financial statements.

It is also interesting to note that Unites States jurisdictions have no equivalent requirement to require privately owned companies to make their financial statements public via regulator filings. US corporations looking to extend their business to Australia are often surprised to learn of this requirement and it can change the way they think about how to structure their operations here.

In Australia, though, the obligation to file financial statements has been a long standing requirement in Australian company legislation, well predating the modern Corporations Act regime. Its policy rationale, back in the day, was that potential creditors of a company should be able to see financial statement information about a company before deciding whether to take credit risk on the company. That sounds like a noble policy purpose, right?

However, when you consider that before ASIC’s publicly accessible database became a thing, searching a company’s filed financial statements was not easy and was not something you could do in a few minutes. In practice, it would have been rare for a potential creditor to go to the trouble of doing that search and, even if they did, the financial statements would always be out of date, anyway. In our experience, a potential creditor considering extending a significant amount of credit to a company will diligence the company and rely on representations, warranties and indemnities - and perhaps guarantees - in relation to a company’s financial state, rather than relying on ASIC searches.

We question whether much has changed now that the financial statements are available within a few minutes of paying a small fee.

**Recommendations**

Even though we question the policy rationale behind this requirement to annually file financial statements with ASIC, it is the law, and ASIC has started to enforce it with vigour.

If your company does not currently file annual financial statements, you should check you are entitled to the exemption. If not, you should consider whether you have been non-compliant for past years too. The fines could be hundreds of thousands of dollars.

If your company does receive requisitions or an enforcement notice from ASIC about filing financial statements, you should immediately obtain legal advice on the issues.

Our team can assist with advice on the filing obligation and advice with responding to ASIC investigations and enforcement actions.

*\*The policy views expressed in this Insight are the views of the authors, not necessarily the views of Piper Alderman.*