

IMPORTANT NOTICE

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What is involved in establishing and registering an Australian company?

Although Australia is a federation of eight different States and Territories, the Corporations Act of 1989 established the concept on an 'Australian company'. This Act is administered by the Australian Securities and Investment Commission (ASIC), with one computer system containing records for all companies operating throughout Australia.

To establish a company in Australia, investors may choose to either incorporate a company themselves or to purchase a 'shelf company', being a company that is not traded.

For more information on the procedures involved in incorporating and registering a company in Australia, refer to the Australian Securities & Investments Commission (ASIC) http://www.asic.gov.au/asic/asic_infoco.nsf/byheadline/Starting+a+company+or+business?openDocument

Once a company is registered with ASIC, a company would then need to apply for an Australian Business Number (ABN) at http://www.abr.gov.au/ABR_BC/ through the Australian Business Register.

In addition, a company would need to register a proposed trading name with the relevant State Government Office.

Companies Incorporated in Australia

Most foreign companies operate in Australia through a locally established subsidiary company, which have the benefit of limited liability and separate legal status. A company can be either public (listed on the Australian Stock Exchange) or a propriety company limited by shares. Companies need to be registered with the Australian Securities and Investment commission (ASIC).

Australian Branches of Foreign Companies

A foreign company which intends to expand in Australia is obliged to register with the Australian Securities and Investments Commission as a foreign company. The requirements for registering as a foreign company include:

- * Appointment of a local agent (either a person or company) for service of notices;
- * Maintenance of a registered office in Australia;
- * A list of the Australian resident directors.

Setting up an company in Australia if you live overseas

At least one of the directors of the company or the company secretary must reside in Australia. For public companies, at least two of the company directors must reside in Australia.

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ASIC: Australian Securities and Investment Commission

Website: <http://www.asic.gov.au>

Phone: +61 3 5177 3988

E-mail: info.enquiries@asic.gov.au

Company Essentials

Every company is required by law to do some basic housekeeping. Here is a list of some of the more common things you may have to attend to:

Setting up your company

When you set up a company you must do the following things, no matter what size the company is/will be.

Register your name. You must:

- register your company name and obtain an Australian Company Number
- have a registered office

Set up a registered office in Australia. You must:

- If your company doesn't occupy the same address as the registered office, then you must have written consent from the person who occupies the registered address.
- A company must display its name prominently at every place at which the company carries on business and that is open to the public.
- A public company must also display its name and the words "Registered Office" prominently at its registered office.
- The registered office of a public company must be open to the public:
- each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm; or
- at least 3 hours chosen by the company between 9 am and 5 pm each business day.
- Any changes to the registered office must be notified to ASIC within 14 days (Form 203 - late fees will apply)

Have a principal place of business

- All companies are required to have a principal place of business within Australia which may or may not be at the registered office. Where the principal place of business is not at the registered office, the company must notify ASIC.
- A change of principal place of business address must be notified to ASIC within 14 days (Form 203 - late fees will apply).
- Use your company name and ACN

You must:

Display legibly your company name, the words "Australian Business Number" and the ABN number on:

- the common seal and every other seal (if any)

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- every public document issued, signed or published by or on behalf of the company
- every negotiable instrument (eg, cheque, promissory note, etc...) issued, or signed, by or on behalf of the company and
- all documents lodged with ASIC

You can abbreviate "Australian Business Number" in the following ways: ABN, A.B.N., or you can abbreviate the words to Aust. for Australian and No. for Number.

Appointment of company officers. You must:

- Appoint at least one director who lives in Australia

A director must not:

- Be under 18 years old
- Be an insolvent under administration
- Have been convicted of serious fraud or corporate crime or
- Be banned by a court or ASIC from managing a corporation.

Public companies must have:

- At least three directors, at least two of whom live in Australia.
- Appoint at least one company secretary who lives in Australia.
- The same person may act as a director and company secretary.

Proprietary Companies:

- As a result of amendments with the First Corporate Law Simplification Act 1995, proprietary companies are no longer required to have a minimum of two directors and two members. Proprietary companies need have only one director and only one member, either from time of registration or by an existing company making the necessary changes.
- An existing proprietary company with multiple directors and members will need to take account of its constitution if it wishes to have only one director and/or one member. For example, the constitution of the company may require, or assume, that it will have two or more directors or two or more members. If so, those rules may need to be amended before the company can move to having a single director or single member. Companies may need to obtain legal advice in that regard.
- Such rules are amended by the passage of a special resolution. A proprietary company limited by shares is exempt from lodging a copy of such special resolution with ASIC.

In the case of a change from multiple directors to a single director, the other directors would first need to retire, resign or be removed in the usual way (ie in accordance with the company's constitution and the Law). The company would then have to lodge a form 304 'Notification of change to officeholders', with ASIC to give notice that those other directors had ceased to hold office. No fee is payable on that form if it is lodged within 14 days after cessation.

Subject to a company's constitution, a single director company may have:

- one member who need not be the director;
- more than one member (membership cannot exceed 50 except under certain conditions).

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Subject to a company's constitution, a single member company may have:

- One director who need not be the member.
- More than one director.
- A company must have at least one company secretary who may also be a director and member.
- Inform ASIC of changes to key details on time.

You must tell ASIC on time if you:

- Appoint or resign company officers or if there is a change to any of their details such as their names and their residential address. You have 14 days from the date of the change (use form 304)
- A director or secretary can tell ASIC directly if they resign, using form 370. A copy of their letter of resignation to the company must accompany the form.
- (The lodging of a form 370 by the director does not remove the obligation on the company to lodge a form 304)
- Change the registered office or its hours of business. You have 14 days from the date of the change (use form 203)
- Change the principal place of business. You have 14 days for the date of change (use form 203.)
- Create a charge on company property (use form 309). You have 45 days from the date of creation of the charge.
- You must certify to ASIC that you have paid the relevant State or Territory stamp duty (use form 350). You can provisionally register a charge before you pay stamp duty and then use form 350 when you have paid the duty. If you don't pay the duty and lodge the form 350 within 90 days, ASIC will delete the charge from our register.
- Change where you keep your company registers and records. You have seven days from the date of the change (use form 909)
- Assign or vary a charge over the company's property. You have 45 days from the date of the variation or assignment (use form 311).
- You don't have to notify us when a charge is satisfied, but it's in your interest to do so. (Use form 312.)
- Change your company name. You have 14 days from the date the resolution was passed (use form 205)
- Alter or reduce the share capital. You have 14 days (use form 2205)
- Allot new shares. You have one month from the date of the allotment (use form 207)
- Transfer shares that are substantial shareholdings (You do not have to notify other share transfers)
- Divide or convert shares into different classes. You have 14 days from the date of the change (use form 211)

If you're late for any of these notifications, you'll have to pay a late fee for the first month overdue. This late fee is substantially higher if you're more than one month overdue.

Running your company.

As long as your company exists, you must do all the following things.

- Lodge annual returns and fees on time

You must:

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- Lodge an annual return for each year with ASIC and pay the fee by 31 January of the next year.
- ASIC will send an annual return form to your registered office in time for you to complete and lodge it. Please note that failure to receive an annual return from ASIC is not an excuse for late lodgement. Please contact ASIC if you have not received your annual return by 1 December. If you don't lodge the form on time with the fee, you'll have to pay a late fee. This late fee is substantially higher if you're more than one month overdue.

Keep company books and records

You must:

Keep company registers of the following members (section 169):

- option holders (if you have them) (section 170),
- debenture holders (if you have them) (section 171),
- interest holders in a managed investment scheme (if you have them),
- minutes of general meetings,
- minutes of meetings of directors, and
- register of charges created by the company over company property (section 271).

With the First Corporate Law Simplification Act 1995, companies are no longer required to maintain the following registers:

- Personal details of directors and secretaries (although this information must still be lodged with ASIC)
- Register of directors' shareholdings (although directors of listed companies must lodge certain information with the Australian Stock Exchange)
- Substantial members (although substantial members will still have to lodge notices with the company, and with the Australian Stock Exchange)
- Notices of beneficial ownership of shares.
- Buy-back of shares.

While there is no longer a requirement to maintain the register of directors and secretaries, the signed consent to act as a director or secretary must be kept by the company.

Keep accounting and other records sufficient to enable annual statements to be prepared and audited if necessary, for at least seven years after the transactions have occurred.

If you don't do this, you may be guilty of a criminal offence and face a fine or imprisonment or both.

Keep company records at your registered office

- Registers must be kept at the registered office of the company, the office at the company's principal place of business, the office where the register is maintained or another office approved by ASIC. The office must be in Australia. A company must notify ASIC within 7 days if a company's register is established at an office which is not the company's registered office, principal place of business or if the register is moved from one office to another. (Use form 909.)
- The public may inspect or obtain copies of any of these company registers.
- If a person requests a copy of the register the company may require them to pay a fee for supplying it (up to a prescribed limited amount).

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- The copy must be supplied within 7 days.

Is your company a small or large proprietary company?

Large proprietary companies have some extra responsibilities. Your company is a large proprietary company if it meets more than one of these three tests:

1. Revenue: more than \$10 million in gross operating revenue at the end of the financial year of the company and the entities it controls.
2. Assets: more than \$5 million in gross assets at the end of the financial year of the company and the entities it controls.
3. Employees: more than 50 employees employed by the company and the entities it controls at the end of the financial year.

- At this stage you'll probably need professional accounting advice.

If your company is a large proprietary company, you must do all the things small companies must do, as explained above.

You must also:

- Prepare a profit and loss statement, balance sheet and a cash flow statement for each financial year.
- Appoint an auditor to audit the company's financial statements lodge the financial statements with ASIC within four months of the end of the financial year.

If your company becomes a public company:

- Becoming a public company means changing the type of your company.
- Public companies have even more responsibilities.
- You must do most things large proprietary companies must do, and many other things as well. These are too numerous to explain in this brochure.
- It would be a good idea to get specialised accounting and legal advice.

Closing your company:

- When you no longer wish to operate your company, what you do depends on whether it still has assets.
- If it has no assets, apply to ASIC to have it deregistered (use form 6010)
- If it still has assets, get advice from your professional adviser.

How to keep ASIC up to date:

- To keep ASIC up to date, you'll need to use the right forms.
- Get the right form through legal stationers (for bulk forms) or an ASIC Business Centre (for single forms).
- If you use a lot of forms, you may wish to buy one of the computer programs on the market, such as ASIC's Forms on Disk. This contains the most commonly used forms using interactive screens you can fill in. Call the customer service number at Centre for Professional Development on 1800 032 694.
- Fill in all the details and attach the right fee.
- Lodge your urgent forms over the counter at any ASIC Business Centre or with a Local ASIC Representative.
- Send less urgent documents to ASIC, Information Processing Centre, Gippsland Mail Centre, VIC 3841.

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- Some forms may be lodged electronically. A list of software products registered by the ASIC is available at any ASIC Business Centre.

Help:

You can get help in person by ringing or visiting an ASIC Business Centre or explore the ASIC Internet site

For advice on a particular issue you may need to consult your solicitor or accountant. This booklet covers only basic requirements in general terms.

Obtain a copy of the Small Business Guide - available from your nearest Commonwealth Government Bookshop.

Companies are bound by the Corporations Law and Regulations. You can buy these from government bookshops or legal publishers.

You're legally responsible for making sure you obey the law. Company directors are legally responsible for complying with the law. You cannot avoid your responsibility because we have left out something from this general guide.

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