

Setting up and operating a company in Australia

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Please note that the information contained here is a summary only of the basic practical steps involved in setting up a company in Australia. This information does not cover the whole of the relevant law and may contain some generalisations about application of the law, while some provisions of the law referred to have exceptions or important qualifications. Particular circumstances need to be taken into account when determining how the law applies and professional advice should be sought. This information cannot be considered as a substitute for professional advice.

Although Australia is a federation of eight different States and Territories, the *Corporations Act* of 1989 established the concept of an 'Australian company'. This Act was updated by the *Corporations Act of 2001* and is administered by the Australian Securities and Investments Commission (ASIC), which manages records for all companies operating throughout Australia.

Companies incorporated in Australia

Most foreign companies in Australia operate through a locally established subsidiary company; this has the benefit of limited liability and separate legal status.

A company can be either public – and, therefore, listed on the Australian Stock Exchange; or proprietary – that is, limited by shares.

All companies must be registered with ASIC.

Australian branches of foreign companies

A foreign company which intends to expand in Australia must register with ASIC 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 a company in Australia if you live overseas

- For proprietary companies – 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.

Company essentials

Every company in Australia is required by law to do some basic housekeeping. When a company is set up the following must be attended to, regardless of the size of the company. It is necessary to:

Set up a registered office in Australia

- Register the company name with ASIC.
- Register the trading name of the company with the relevant State Government office.
- Obtain an Australian Business Number from the Australian Business Register.
- Have a registered office. If a company doesn't occupy the same address as the registered office, there must be 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 three 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.

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 (late fees apply).

Use the Australian Business Number (ABN)

The words 'Australian Business Number' and the ABN number must be legibly displayed on:

- The common seal and every other seal (if any).
- Every public document issued, signed or published by or on behalf of the company.
- Every negotiable instrument – for example, a cheque or promissory note – issued, or signed, by or on behalf of the company.
- All documents lodged with ASIC.

Appoint company officers

A company must have at least one director who lives in Australia. (Please note that a director cannot be under 18 years old, 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: public companies must have at least three directors, with at least two living in Australia and must 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, and need have only one director and one member.

Legal advice should be obtained and ASIC must be informed about any changes to key details. ASIC must be notified on time, if:

- Company officers are appointed or resign, or if there is a change to any of their details such as names or residential address (14 days for notification). A director or secretary can tell ASIC directly if they resign.
- The registered office or its hours of business are changed (14 days for notification).
- The principal place of business is changed (14 days for notification).
- A charge is created on company property (45 days for notification).

- The place where company registers and records are kept is changed (seven days for notification).
- A charge over the company's property is assigned or varied (45 days for notification).
- The company name is changed (14 days for notification).
- Share capital is altered or reduced (14 days for notification).
- New shares are allotted (one month for notification).
- There is a transfer of shares that are substantial shareholdings. (It is not necessary to have to notify other share transfers.)
- Shares are divided or converted into different classes (14 days for notification).

Late notifications incur a fee.

Running a company

As long as a company exists, the following must take place:

- Annual returns and fees must be lodged on time.
- Annual returns for each year must be lodged with ASIC and the relevant fee paid by 31 January of the following year.
- ASIC will send an annual return form to the company's registered office in time for the return to be completed and lodged. 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. Failure to lodge the form on time, with the fee, incurs a late fee. This fee is substantially higher if the lodgement is more than one month overdue.

Keep company records, registers and minutes

Company registers must be kept of the option holders, debenture holders, and interest holders in a managed investment scheme (if you have them).

Minutes must be kept of general meetings, as well as meetings of directors. A register of charges created by the company over company property must also be kept.

Keep accounting and other records in sufficient order to enable annual statements to be prepared and audited, if necessary. These records must be kept for at least seven years after the transactions have occurred. Failure to do this is regarded as a serious offence which may be regarded as criminal and may result in a fine or imprisonment, or both.

Keep company records at a 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 at another office approved by ASIC. The office, however, must be in Australia.

A company must notify ASIC within seven 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.

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).

The copy must be supplied within seven days.

Large proprietary companies have extra responsibilities

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

- Revenue: more than A\$10 million in gross operating revenue at the end of the financial year of the company and the entities it controls.
- Assets: more than A\$5 million in gross assets at the end of the financial year of the company and the entities it controls.
- 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 will need to get professional accounting advice.

A large proprietary company must do all the things small companies must do, and 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. These must be lodged with ASIC within four months of the end of the financial year.

Closing a 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.
- If it still has assets, get advice from a professional adviser.

Please remember that setting up and running a company in Australia has legal implications – and all companies must operate within the law of the land. The information contained in this Fact Sheet necessarily covers only the most basic requirements of setting up a business in Australia. For full details of obligations when running a company in Australia, check with the Australian Securities & Investments Commission at www.asic.gov.au.

For professional advice, please consult a solicitor or accountant.

Useful websites

For more information on setting up and running a company in Australia, go to:

Australian Securities & Investment Commission www.asic.gov.au

Australian Business Register www.abr.gov.au

The Australian Stock Exchange www.asx.com.au

About Austrade

The Australian Trade Commission – Austrade – is the Australian Government's trade and investment development agency.

Through Austrade's global network, we assist Australian companies to succeed in international business and attract productive foreign direct investment into Australia.

Austrade is the first national point-of-contact for all investment inquiries. Working in partnership with business and government, Austrade can provide your company with the information needed to establish or expand a business in Australia.

Austrade can also help by connecting you with the right industry and government contacts as well as providing information on investment regulations and government assistance programs.

For more information email info@austrade.gov.au or visit austrade.gov.au

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