

Branch Registration Guide

Registering as a foreign company with ASIC

This handy guide provides an overview of the steps involved when registering a as a foreign company in Australia with ASIC, as well as a checklist of the information you need to provide when completing your branch registration application form.

WHAT IS A BRANCH REGISTRATION?

If you are deemed to be carrying on a business in Australia, as defined broadly under the Corporations Act, then you are required to register your company with ASIC. Foreign businesses generally have two options when establish their business in Australia, each of which have their pros and cons.

The first option is to register directly as a foreign company with ASIC. This method is akin to establishing a branch in Australia, as it does not require the establishment of a separate legal entity.

The second option involves operating your business as an incorporated entity such as a proprietary limited (Pty Ltd) company which will transform your enterprise into a separate legal entity.

This guide covers the first option only – registering as a foreign company with ASIC. If you need information regarding company incorporation services, please contact us or visit our website.

CHOOSING A COMPANY NAME

When registering as a foreign company in Australia you must register your company name as it appears on your company's existing certificate of incorporation (or equivalent document).

In some instances, however, this name will not be available to register in Australia due to the existence of a business or company name already registered in Australia by some other person or company unrelated to you.

In such instances, the options available to you include:

1. Change your company name in your home jurisdiction to a name that is available;
2. Apply for Ministerial consent to register an identical company name under s601DC(2) of the Act;
3. Make a minor change to the name of your company by adding a word eg No. 1, (NZ), Australia, Aust, Ireland, etc. The name will be subject to ASIC approval.

Option 3 is the most convenient and practical option to select and it would only be in unusual circumstances that a company would elect to choose option 1 or 2.

You can check if your proposed company name is available by using the handy name availability checker tool on the home page of www.abnaustralia.com.au. Alternatively, you can search ASIC's company register directly on ASIC's website.

BRANCH REGISTRATION OVERVIEW

When we register your foreign company with ASIC as a branch, the company can conduct business throughout Australia without needing to register in individual states and territories.

To start the process for registering a company you need to email us on contact@abnaustralia.com.au or otherwise visit our company registration page located at:

<https://abnaustralia.perfectwebteam.nl/foreign-company-services/business-establishment-services/branch-establishment-services>

From this page it is possible to start the branch registration process by completing our branch registration form, or by submitting our enquiry form.

For international clients, we recommend contacting us before starting any branch or company registration process.

Customers who register their branch through ABNAustralia.com.au will receive a comprehensive documentation package which includes the following items:

- A Certificate of Registration from ASIC
- Company ARBN (Australian Registered Body Number)
- Officeholders' consent
- Consent to act as Public Officer
- Directors minutes
- Statutory registers as required
- Journals
- Printing, binding, and delivery options available.

INFORMATION CHECKLIST

To complete our branch registration application, you need to determine the information listed below. Print this checklist out for convenience and gather the information before you start online.

Choose your Company Name

- You can only use a name that is not identical to the name of an existing company or business in Australia. Use our Check name availability search on our website to see if the name you want is available.
- If your company name is identical to an existing company or business name in Australia, then you need select an option as described on page 1 of this guide (for example by adding a minor variant eg (AU) to the end of the company name).
- If you aren't ready to register your entity as a foreign company in Australia but want to make sure a name is available, you can apply to reserve it by lodging Form 410 Application for reservation of a name.

Registered Office Address

- You must maintain a registered office in Australia that is open every business day from at least 10 am to 12 pm and 2 pm to 4 pm. This is unless you notify ASIC of alternative registered office hours.
- Decide on the address of the company's registered office:
 - confirm whether the company occupies these premises, or if someone else does (eg your accountant)
 - confirm whether the company's principal place of business is the same as the registered office address.

Local Agent Details

- A registered foreign company must always have a local agent. The local agent of a registered foreign company:
 - is responsible for any obligations the company must meet
 - may be liable for any breaches or penalties.
- A local agent can be appointed by:
 - a memorandum of appointment (Form 418 may be used for this purpose) or a power of attorney duly executed by the foreign company
 - Form 404 Notification of change to agent of a foreign company to appoint the new agent.
- The local agent must be an individual or an Australian company who is resident in Australia and authorised to accept service of process and notices.

Details of Directors

- You will need to provide details of all existing directors of your overseas company including:
 - Name
 - Residential address
 - Date and Place of Birth
 - Date of Appointment

Provide Supporting Documents

- A high proportion of foreign company registration applications are delayed or refused because they don't contain the correct documentation. You must ensure that all your supporting documents meet the requirements.
- If any document for lodgment is not in English, you must provide a reasonable translation into English.
- You generally need to provide the following documentation when registering as a foreign company with ASIC:
 - A current certified copy of the entity's certificate of incorporation or registration. The certificate (or similar document) must have been issued by the governing authority in the place of incorporation that exercises similar functions to ASIC ('ASIC equivalent').
 - A current certified copy of the entity's constitution. The copy of the constitution must include all amendments that have affected the constitution to the date it is received by ASIC. If the entity does not have a constitution or is bound by some other means of governance, you must provide a written statement to that effect.
 - A memorandum of appointment of the local agent or power of attorney in favour of the local agent. Form 418 Memorandum of appointment of local agent may be used for this purpose. The memorandum or power of attorney must be executed by, or on behalf of, the entity. It must state the name, address and appointment date of the local agent.

Notes

OVERVIEW OF BUSINESS REQUIREMENTS FOR BRANCHES

It is possible for foreign companies to conduct business in Australia through a branch office. To establish a branch, the foreign company must be registered with the Australian Securities and Investments Commission (ASIC) and assigned an Australian Registered Body Number (ARBN).

- ☑ A branch is not a separate legal entity. The foreign company has full legal responsibility for the action of the Australian branch;
- ☑ Must appoint at least one local agent;
- ☑ Local agent has responsibility for ensuring the foreign company's compliance with the Corporations Act 2001 (Cth) (Corporations Act)
- ☑ Must maintain a registered office in Australia;
- ☑ Taxed as a separate entity in Australia. Taxed on all income sourced from Australia; and
- ☑ The Foreign Investment Review Board approval may be required before assets/land is acquired.

LEGAL AND REPORTING OBLIGATIONS OF A REGISTERED FOREIGN COMPANY

Once registered, a foreign company has ongoing obligations both with ASIC and the ATO.

Registered Office Address

- ☑ You must maintain a registered office in Australia that is open every business day from at least 10 am to 12 pm and 2 pm to 4 pm. This is unless you notify ASIC of alternative registered office hours.
- ☑ A representative of your company must be present at the registered office whenever it is open.
- ☑ You must display the company's name outside every office and place of business that is open to the public.
- ☑ Unless your company is a bank or other authorised deposit-taking institution, it must also display:
 - its place of origin
 - at its registered office, the words 'registered office'
 - notice of the limited liability of its members (if the company's name does not end in 'Limited' or 'Ltd').

Display your ARBN correctly

- ☑ You must display your company's name and ARBN on all public documents. This includes negotiable instruments published or signed in the jurisdiction.
- ☑ Unless the company is a bank or other deposit-taking institution, every public document and instrument

must also include:

- its place of origin
- notice of the limited liability of its members if applicable (if the company's name does not end in 'Limited' or 'Ltd').

Use of a Local Agent

- ☑ A registered foreign company must always have a local agent. The local agent of a registered foreign company:
 - is responsible for any obligations the company must meet
 - may be liable for any breaches or penalties.
- ☑ If your local agent stops acting as an agent, you must appoint another one.

Establish a branch register of members

- ☑ A registered foreign company that has share capital may need to establish a branch register of members in Australia.
- ☑ If an Australian resident member requests you register their shares in a branch register, you must register them or establish a branch register within one month of the request. You may not discontinue the branch register without the member's consent.
- ☑ If a member requests in writing that you register their shares in another register, you must remove the member's shares from the branch register and register those shares in the register requested by the member.

Lodge Documents with ASIC

- ☑ A registered foreign company must lodge an annual return at least once every calendar year and within one month after the date of the annual general meeting (AGM). If the company's place of incorporation does not require it to hold an AGM, we suggest lodging the annual return at the same time each calendar year.
- ☑ Registered foreign companies must lodge financial statements with ASIC at least once every calendar year. The time between financial statements can't be more than 15 months.
- ☑ A foreign company that relies on relief provided under ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204 does not have to lodge financial statements with ASIC.
- ☑ If details about your company, its directors or the local agent change, you must let ASIC know.
- ☑ New Zealand companies that are registered as foreign companies in Australia do not have to lodge certain documents.

OTHER FREQUENTLY ASKED QUESTIONS

Please see below a summary of the key considerations and facts relevant to registering as a foreign company (branch) in Australia.

Minimum Capital Requirement

No minimum capital requirement.

Legal Liability

A foreign company has full legal responsibility for the actions of the Australian branch, and can sue and be sued in Australia. A local agent may also be personally liable for penalties imposed on the foreign company for contraventions of the Corporations Act.

Tax Presence

A foreign company is taxed as a separate entity in Australia and taxed on all income sourced from Australia. As the foreign company is carrying on an enterprise in Australia, it will also be required to register for GST.

Incorporation Process

A foreign company's registration with ASIC has the effect of establishing a branch office. The foreign company wishing to apply for registration should reserve the company's name to ensure that it is available in Australia and must lodge with ASIC an application form, together with a certified (and translated if not in English) copy of the company's certificate of registration and constituent documents. Once the application is lodged, processing may take up to 28 days.

Business Recognition

Less common (and thus less well known to third parties) than a subsidiary.

Shareholder Meeting Requirements

n/a

Board of Director Meeting Requirements

n/a

Annual Company Tax Returns

Must lodge a (federal only) company tax return each year, even if the business doesn't expect to pay any income tax.

Business Registration Filing Requirements

A balance sheet, profit and loss account, and cash flow statement must be lodged with ASIC each (unless ASIC relief can be obtained)

Exit Strategy

Cessation – within seven days after ceasing to carry on business in Australia, a registered foreign company must lodge written notice that it has so ceased.

Dissolution of foreign company – if ASIC receives notice from a local agent of a registered foreign company that the foreign company has been dissolved or deregistered in its place of incorporation, ASIC must remove the foreign company's name from the register.

Annual Corporate Maintenance Requirements

Once the foreign company is registered, it is required to lodge with ASIC, at least once every calendar year and at intervals of not more than 15 months:

- (i) A copy of its balance sheet, profit and loss statement, and cash flow statement;
- (ii) Any other documents it is required by law to lodge in its country of origin;
- (iii) And pay ASIC the prescribed lodgment fee.

Changes to directors need to be notified as they occur.

Director/Officer Requirements

Not required to have a local director but a registered foreign company must have one local agent.

Local Corporate Secretary Requirements

Not required to have a secretary.

Local Office Lease Requirement

Must have a registered office in Australia. This does not have to be owned or leased.

Nationality or Residency Requirements for Shareholders, Directors and Officers

Must have at least one local agent – an Australian company or resident in Australia.

Summary of Director's, Officer's and Shareholder's Authority and Limitations Thereof

A local agent is answerable for the doing of all acts, matters and things that the foreign company is required by or under the Corporations Act to do.

Public Disclosure of Identity of Directors, Officers and Shareholders

Details of the foreign company's director(s) and local agent(s) are publicly available on ASIC's database.

Restrictions Regarding Appointment of Nominee Shareholders or Directors

N/A – this is subject to the requirements of the foreign company's place of incorporation.

Minimum and Maximum Number of Directors and Shareholders

N/A – this is subject to the requirements of the foreign company's place of incorporation.

Minimum Number of Shareholders Required

N/A – this is subject to the requirements of the foreign company's place of incorporation.

Removal of Directors or Officers

Generally, directors may be removed by shareholders. N/A – where a person is a local agent of a foreign company, the foreign company or the person may lodge a written notice stating that the person's appointment as a local agent has terminated, or will terminate, on a specified day.

Meeting Requirements

N/A – this is subject to the requirements of the foreign company's place of incorporation.

Auditing of Local Financials

A foreign company must lodge the following financial statements with ASIC once a year:

- (i) Balance sheet;
- (ii) Profit and loss statement;
- (iii) Cash flow statement; and
- (iv) Any other document the company is required to prepare by the law of its place of origin.

Audit is generally not required but ASIC may request audited financial statements if previously lodged statements are insufficient.

Summary of How Funds Can Be Repatriated from Your Jurisdiction

Repatriation of funds may generally be undertaken at any time. There is no withholding tax payable on the remittance of branch profits to the foreign holding company.

Licenses Required to Conduct Business in Australia

Apart from the usual tax registrations applicable to all trading companies, namely:

- (i) An Australian Business Number (ABN);
- (ii) An Australian Tax File Number (TFN); and
- (iii) Goods and Services Tax (GST) registration.

There are no general registrations, licenses or permits that are required to establish a company or conduct business in Australia. There may be licenses required relevant to specific industries your company operates in (eg liquor license in NSW)

CONTACT US AND SUPPORT

ABN Australia are a family run business that has been providing company registration and compliance services to domestic and international clients since 1976.

If you would like to know more about registering a company in Australia, please contact us by:

- emailing contact@abnaustralia.com.au; or
- calling +61 1300 226 226.

More information is available on our website at:

www.abnaustralia.com.au/companies/proprietary-company-limited-by-shares