



MEMO

To: Board of Directors
From: Company Secretary
Subject: **REGISTERING A FOREIGN COMPANY IN AUSTRALIA**

If you already have a company registered in another country outside of Australia you may be eligible to register as a foreign company in Australia.

A foreign company is a body corporate which has been formed or incorporated in a country or territory outside of Australia, or an unincorporated body that is formed in a country or territory outside of Australia which may sue and be sued or may hold property in the name of its secretary or other officer. However, corporations sole, exempt public authorities, and unincorporated bodies that have their head office or principal place of business in Australia, are excluded from the definition of foreign company.

If a foreign company wishes to carry on business in Australia it must be registered under Part 5B.2 of the Corporations Act.

How to Register a Foreign Company in Australia

Step 1 – Registration decision

To register a foreign company in Australia first complete Step 2, which is the same as for Australian companies.

When a company is registered under the Act it is automatically registered as an Australian company. This means that it can conduct business throughout Australia without needing to register in individual State and Territory jurisdictions.

Step 2 – Choose a company name

You can move straight to Step 3 and complete Form 402 which allows you to apply to register the company or you can complete Form 410 which allows you to reserve the name only. If your name is approved it will be reserved for two months. At the end of the two months you may apply for an extension.

- A company name must indicate the company's legal status (for example, a proprietary company must have 'Proprietary' or 'Pty' in its name)
- A company name must also include the liability of its members (e.g. if liability is limited the company name must end with 'Limited' or 'Ltd')
- You cannot choose a name that is already registered to a company or business in Australia



- There are certain words and phrases that cannot generally be used (for example, Bank or University)
- A company name cannot be offensive or suggestive of illegal activity
- You may also need to consider if your proposed name is similar or identical to any registered or pending trade marks, and the possible consequences of that.

Step 3 – Complete the relevant application form

If you want to register a foreign company, complete [Form 402 - Application for registration as a foreign company](#) (s.601CE).

The form asks for general details about the corporation and requires:

- An indication of whether there are any existing charges on property of the company in Australia, and if there are, details of those charges must be given
- Details of all directors or their equivalent, including date and place of birth
- Details of the appointment of a local agent; and if the registered office will not be occupied by the company but by, for example, its accountant or solicitor, the form must show thereon that their consent has been given to the company's use of that address.

Step 4 – Assemble accompanying documents

The following documents are required to be lodged with the application for registration (Form 402).

- A certified copy of the company's current Certificate of Incorporation or Registration, or the equivalent document
- A certified copy of the company's constitution (Memorandum and Articles of Association or its equivalent). This document can be certified by:
 - whoever has lawful custody of the original document (eg, NZ Companies Office)
 - a notary public
 - or a director or secretary of the corporation by an affidavit.
- If there are currently any charges on the property of the company held within Australia or an external territory, for each charge, a Form 309 Notification of Details of a Charge and where applicable a Form 350 Certification of Compliance with Stamp Duties Law and associated documents must be lodged
- If the list of directors on the application form includes directors who are resident in Australia and members of a local board of directors you must lodge



a memorandum executed by or on behalf of the foreign company stating the powers of those directors

- A memorandum of appointment of the local agent or power of attorney of the local agent
- Translation of documents – if any document is not in the English language, a certified translation of that document into English (s1304). The translation must be certified in writing to be a correct translation.

Step 5 – Lodge the form and associated documents with the prescribed fee

- Visit the ASIC website for more detailed information about registering as a foreign company.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.