

## **FOREIGN COMPANY REGISTRATION IN AUSTRALIA**

If a foreign company wishes to carry on business in Australia it must be registered under Part 5B.2 of the Corporations Act 2001 (the Act).

**The first step** is to make sure the company name is available to register here. If the name is available it can be reserved if necessary while the necessary documents are being collated to apply for registration, however, it is not compulsory to reserve the name first. If you wish to reserve the company name you need to complete a Form 410 Application for Reservation of Company Name and lodge with Australian Securities & Investments Commission (ASIC) with prescribed fee which is \$40AUD at present.

If the name is available, the next step is to complete a Form 402 Application for registration of a foreign company.

The Form 402 asks for general details about the corporation. In addition, the form requires:

- An indication of whether there are existing charges on the property of the company and if so, details of those charges must be given;
- Details of all directors or their equivalent, including full names (no initials), date and place of birth;
- Details of the appointment of a local agent; and if the registered office address will not be occupied by the company, the form must show thereon that consent has been given by the occupier for the company to use that address
- The Form 402 must be signed by a director of the company

The Form 402 must be accompanied by the following documents:

1. A certified copy of the company's **current** Certificate of Incorporation or Registration, or the equivalent document. The certificate must be certified as a true copy by the authority in the company's place of incorporation which exercises functions similar to those of ASIC. The certification should be dated no more than 3 months before the copy is lodged with ASIC, unless an extension has been granted.
2. A certified copy of the company's constitution (Memorandum and Articles of Association or its equivalent). This can either be an up to date copy embodying all alterations or a copy of the original document together with copies of all resolutions altering or affecting the constitution. The document can be certified as a true copy by:

- Whoever has lawful custody of the original document (ASIC equivalent)
  - A notary public; or
  - A director or secretary of the corporation by an affidavit.
- **Translation of documents** – If any document is not in English, a certified translation of that document is not English (s1304). The translation must be certified in writing to be a correct translation.
3. If the list of directors includes either a resident of Australia or 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.
  4. If any current charges on the property of the company held within Australia, then a Form 309 Notification of Charge Details needs to be lodged and, where applicable a form 350 Certification of compliance with stamp duties law and associated documents.
  5. A Memorandum of Appointment of the local agent or power of attorney in favour of the local agent.(Form 418) This document must be executed by or on behalf of the foreign company and state the name and address of the local agent, who is:
    - A natural person or company;
    - Resident in Australia; and
    - Is authorised to accept, on behalf of the foreign company, service of process and notices.

If the memorandum of appointment or power of attorney is executed on behalf of the foreign company, a copy of the document must be accompanied by a Form 403 Verification of copy of document.

*\*See Section 601CJ – Liability of Local Agent*

*A Local Agent of a registered foreign company:-*

- (a) *is answerable for the doings of all acts, matters and things that the foreign company is required by or under the Act to do: and*
- (b) *is personally liable to a penalty imposed on the foreign company for a contravention of the Act if a court or tribunal hearing the matter is satisfied that the local agent should be so liable.*

**The ASIC REGISTRATION FEE IS presently \$800-00 AUD and must be lodged with all of the above documents.**

**Subject to ASIC approval of the Registration Application and payment of Registration Fee, ASIC will issue a Certificate of Registration of Foreign Company and give the company a Australian Registered Body Number (ARBN).**

**Post registration obligations for Foreign Companies:**

1. Display the registered name at the Registered Office address in Australia together with its place of origin and if the liability of its members is neither “Limited” or “Ltd”, notice of the fact that the liability of its members is limited.
2. The Australian Registered Body Number (ARBN) for the company must be written after the company name where the company name first appears on every public document, plus its place of origin and if the liability of its members is neither “Limited” or “Ltd”, notice of the fact that the liability of its members is limited.
3. Annual reporting to ASIC:  
A registered foreign company is required to lodge with ASIC, at least once every calendar year and at intervals of not more than 15 months:
  - a copy of its balance sheet, profit and loss statement and cash flow statement (all made up to the end of the last financial year); and
  - any other document as the company is required to prepare by the law applicable in the company’s place of origin (with a form 405)

*However, if a registered company is of a type declared by ASIC under subsection 601CK(7), to be exempt from the financial reporting requirements mentioned under 3.1, it may lodge an “annual return” (form 406) in lieu of form 405 & financial statements. (See ASIC Policy Statement 58 available from [www.asic.gov.au](http://www.asic.gov.au))*

4. Notice of Changes in Foreign Company details:

A registered foreign company must lodge the following forms with ASIC to advise changes within the required time frames or Late Fees apply:

- change of company name (within 14 days of change) (Form 489)
- its constitution (within 1 month of change)
- its directors (within 1 month of change)(Form 490)
- Local Agent and or address of Local Agent (within 1 month of Change)
- the powers of any directors who reside in Australia and members of an Australian board of directors (within 1 month of the change)
- the Registered Office Address or Place of Business in its place of origin (within 1 month of the change)
- the address of its Registered Office in Australia (within 7 days of the change)
- written notice of ceasing to carry on business in Australia (Form 407) must be lodged within 7 days or within 1 month if it is wound up or dissolved in its place of incorporation or origin.