



NCS Newsletter

Our quarterly September edition features some information on Registration Procedures for Foreign Companies investing or trading in Australia. We often get queries on whether or not it is necessary for a Foreign Company to register in Australia – read more below. Once again, the year is disappearing fast and we have some reminders for standard ASIC Forms where deadlines are looming!

Foreign Companies Investing in Australia

Registration Procedures for Foreign Companies Investing in Australia

Foreign investments are regulated under the *Foreign Acquisitions and Takeovers Act*, which requires notification to the Federal Treasurer of proposed acquisitions by foreign persons of a substantial shareholding (15% by an individual, or 40% where two or more persons act together) in an Australian company with total assets valued in excess of AUD\$50 million (AUD\$800 million for prescribed foreign investors in non-sensitive sectors) or a substantial shareholding in an Australian company where more than 50% of its assets are Australian urban land. The Treasurer then makes the final decision and may prevent investment deemed to be 'contrary to the national interest'. ASIC has power to ensure business is being conducted in accordance with *Corporations Act 2001*.

Registration with ASIC

A foreign company is required to register as carrying on business in Australia if it:

1. Has a place of business in Australia (eg a permanent office);
2. Establishes or uses a share transfer office or share registration office in Australia; and
3. Administers, manages or deals with property in Australia as an agent, legal personal representative or otherwise.

In order to register with ASIC, a foreign company must:

- Establish that the company name is available;
- Appoint at least one "Local Agent" (either a natural person or an Australian company) who:
 - ◇ is authorized to accept notices and service of process on behalf of the foreign company;
 - ◇ is responsible for ensuring compliance with the *Corporations Act 2001*; and
 - ◇ may be personally liable for penalties imposed for breaches of the *Corporations Act 2001*.
- Establish a registered office within Australia to which communications and notices may be sent;
- Lodge with ASIC:
 - ◇ certified copies of its current certificate of incorporation or registration and its constitution;
 - ◇ details of the directors and a memorandum stating the powers of any resident Australian directors or members of any Australian local board of directors;
 - ◇ details of Security interests over property located within Australia or its external territories; and
 - ◇ details of its registered office or principal place of business in its registered office in Australia.



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Foreign Companies (cont)

Registration of a foreign company is complete on lodgement of these documents and any payment of the relevant ASIC Fee (currently \$400). However, a foreign company should be aware that, the company is not required to register as carrying on business in Australia if it merely:

- maintains a bank account;
- effects a sale through an independent contractor;
- solicits or procures an order that becomes a binding contract (if the order is accepted outside Australia);
- creates evidence of a debt, or creates a charge on property;
- services or collects any of its debts;
- conducts an isolated transaction that is completed within a period of 31 days and is not repeated from time to time; or
- invests any of its funds or holds any property.

Types of Business Structure

It is recommended that foreign investors familiarize themselves with the legal and taxation implications of the different forms of business structure, should they begin business in Australia. A business in Australia can be established by a number of structures including a sole trader, trust, a company, a joint venture, a partnership of a branch of a foreign company. Each form of entity will attract different tax consequences and should be thoroughly researched before advising prospective clients.

ASIC Form 388 and Financials

Please remember that any Public Unlisted Companies, Large Proprietary Companies and Pty Ltd companies wholly owned by a foreign company are required to lodge a Form 388 and audited financials with ASIC by 30 October each year (for companies with a Year End Date 30 June)

Public Listed companies should have lodged a Form 388 and audited financials by 30 September for companies with a Year End Date 30 June).

Staff News

NCS staff member James Simon is to marry Jennifer Tumbri at the "Fairfield Boathouse" on Sunday 1st November, 2009.

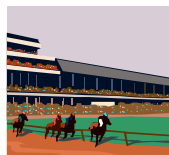
We wish James & Jenny a day to remember and much happiness together!



NCS Newsletter

Our final edition of our Newsletter for 2009 will be published in early December and we would welcome any suggestions or articles on interest for inclusion.

Melbourne Cup Weekend



Please note, NCS will be CLOSED **Monday 2 November** and **Tuesday 3 November** in order to have a well earned rest before the Christmas/Year End rush!

NORFOLK CORPORATE SUPPORT

PO Box 423

Bundoora Business Centre
VIC 3083

Phone:

(03) 9466 9990

Fax:

(03) 9466 9599

Email:

enquiries@ncs-services.com.au

Web:

www.ncs-services.com.au