

## Company searching and registration in Australia



### Australian Securities & Investments Commission (ASIC)

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## Introduction to ASIC

The [Australian Securities & Investments Commission \(ASIC\)](#) enforces and regulates company and financial services laws to protect consumers, investors and creditors. ASIC reports to the Commonwealth Parliament, the Treasurer and the Parliamentary Secretary to the Treasurer. An independent Australian government body, ASIC has regulated financial markets, securities, futures and corporations since January 1991. From 1998 they became responsible for consumer protection in superannuation, insurance, deposit taking and, from 2002, credit.

## How to register an Australian company

To register a company in Australia there are seven steps you should follow:

### Step one - Decide on your business structure

You need to ensure that your company structure best suits your business needs. It is recommended that you seek legal or professional advice on this, particularly if you are not familiar with Australian company structures.

When a company is registered under the Corporations Act 2001 ('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.

- [Visit the ASIC website for more information on this step.](#)

### Step two - Choose a company name

Once you have chosen a name you can either complete Form 201 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, if liability is not limited 'No liability' or 'N.L.' must be used at the end). **Note** | there are some exceptions to this under section 150 of the Act
  - You cannot choose a name that is already registered to a company or business
  - There are certain words and phrases that cannot be used (for example, 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
- [Visit the ASIC website for more information on this step.](#)

### **Step three - Determine if you will operate under replaceable rules or a constitution or a combination of both replaceable rules**

The basic rules for internally managing a company are included in the Act as 'replaceable rules'. Some of these rules are mandatory or all companies.

A company can take advantage of the rules in the Act to govern its internal management. It does not need a constitution of its own.

A company only needs a constitution if it:

- Wants to get rid of, modify or add to the replaceable rules
  - Is a proprietary company with the same person as its sole director and sole shareholder
  - Is a company that had a constitution (Memorandum and Articles) before the introduction of replaceable rules, and it has not repealed the constitution.
- [Visit the ASIC website for more information on this step.](#)

### **Step four - Obtain consents: member(s), director(s) and secretary(ies)**

Before applying to register a company you must get written approval from people who agree to fill the roles of director(s), secretary and member(s).

A proprietary company must have at least one director but does not need to have a secretary. The director and secretary (if any), must ordinarily reside in Australia.

A public company must have at least three directors and at least one secretary. At least two of the directors and one secretary must ordinarily reside in Australia.

For companies limited by guarantee, members are liable as contributories on winding up of the company. Each member must agree in writing to the amount of 'guarantee' they will pay.

These consents do not need to be lodged when applying to register a company but they must be kept with the company's records once it has become registered.

- [Visit the ASIC website for more information on this step.](#)

### **Step five - Complete and lodge the application form**

Once steps 1-4 have been completed you are ready to lodge the application form.

Access [Form 201 - Application for registration as a company.](#)

You will need to fill in details about:

- Proposed company name
- The class and type of registration

- The registered office details
  - The principal business details
  - Director and secretary details
  - Share structure details
  - Members' share details.
- [Visit the ASIC website for more information on this step.](#)

## Step six - (optional) Order a commemorative record of registration

- [Visit the ASIC website for more information on this step.](#)

## Step seven - Get to know your legal obligations

Ensure you fully understand your legal obligations. It is recommended that you obtain independent legal advice.

- [Visit the ASIC website for more information on this step.](#)

## FAQs

### What if you already have a company registered in New Zealand?

If you already have a registered New Zealand company 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 an external territory or outside Australia, or an unincorporated body that is formed in an external territory or outside Australia and 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 2001 (the Act).

## How to register a foreign company in Australia

### Steps one and two

To register a Foreign Company in Australia complete [Steps 1-2 for Registering an Australian Company.](#)

### Step three - Complete the relevant application form

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

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, 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 four - 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 (ASIC equivalent)
  - 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 English, a certified translation of that document into English (s1304). The translation must be certified in writing to be a correct translation.

### **Step five - Lodge the form and associated documents with the prescribed fee**

- [Visit the ASIC website](#) for more detailed information about registering as a foreign company.

## **FAQs**

### **How much will it cost?**

**Note** | The fees increased on 1 July 2010.

- **Form 410** - Application for reservation of name or extension of reservation **AU\$41**

**Form 201** - Application for registration as a company (Part 2A.1 company (s.112))

- having a share capital **AU\$412**
- not having a share capital **AU\$340**
- **Form 402** - Application for registration as a foreign company (s.601CE) **AU\$412.**

These fees are not subject to GST.

- [Visit the ASIC website for a full list of all ASIC fees.](#)

### **What is a registered business name?**

A registered business name is a trading name under which a person carries on business or trades. Registering a business or trading name is different to registering a company.

You should note that the word "company" in a name does not necessarily mean that the organisation is registered as a company under the Corporations Act 2001.

Registered business names are issued by the State or Territory in which the business or trade is carried out.

For full information on registered business names, contact the appropriate state or territory authority.

### **When your company is registered in Australia**

From 1 September 2007, companies that are incorporated in either New Zealand or Australia and are subsequently registered with either the New Zealand Companies Office (Companies Office) or the Australian Securities & Investments Commission (ASIC) to operate on both sides of the Tasman have had their filing obligations reduced.

Previously these companies were required to lodge information with both ASIC and the Companies Office. In some instances identical information was lodged with both regulators. Complementary legislative changes enacted by the New Zealand and Australian governments have now removed this duplication of effort.

## A joint Australian and New Zealand initiative

New Zealand companies operating as foreign companies in Australia are now only required to lodge basic company data once, directly with the New Zealand Companies Office. This information will then be filed directly with ASIC via an electronic data exchange and vice versa.

Lodgement requirements for these companies will be refined to exclude information that ASIC is able to source from the Companies Office. Likewise, the Companies Office has removed reporting requirements where they can receive information directly from ASIC.

Importantly, lodgement requirements for companies operating across the Tasman will only reduce where duplication currently exists. Changes that require information that the other agency does not hold must still be lodged.

The only fees incurred will be those incurred filing with the jurisdiction in which the company is incorporated. There is no additional fee charged for the data exchange and any fee that was previously charged by the overseas jurisdiction will no longer be incurred.

### Types of lodgement covered by this initiative

The types of changes covered by this initiative include:

- changes to registered office address (in country of incorporation)
- changes to company constitution
- changes to names and addresses of company directors
- appointments of company directors (only for Australian companies lodging with the Companies Office – New Zealand incorporated companies operating in Australia will still be required to lodge direct with the ASIC as notification date and place of birth is required which Companies Office cannot provide)
- cessations of company directors, and
- lodgement of financial statements (only for NZ companies lodging with the ASIC – Australian incorporated companies operating in New Zealand will still be required to lodge direct with the Companies Office).

Foreign companies whose place of origin is not New Zealand will continue to lodge with ASIC under the existing arrangements.

### Data exchange between ASIC and the NZCO

ASIC and the NZCO have jointly designed and built an automated data sharing capability to replace the need for reporting of duplicate data. The implementation of this capability was aligned with the 1 September 2007 commencement date for the legislative provisions.

Lodgement by the company with the home (country of incorporation) agency will be the trigger for ASIC and the NZCO to exchange data. The host (foreign/overseas) agency will receive updates direct from the home regulator to ensure legislative obligations are met, and maintain the integrity of the respective corporate registers.

Whilst the current company obligations for lodgement of duplicate data with the host agency will cease, the value of information available on the ASIC and NZCO Registers will be maintained. There will be no degradation in the data available to the searching public from either the New Zealand Companies Office Register or the ASIC Register.

### Searching services

There are a number of free searches that you can perform from the [ASIC website](#).

- **National Names Index** - allows you to find basic details about current and former companies, business names and other organisations
- **Identical Names Check** - Check that the company name you are proposing is not identical to one already registered on the ASIC database
- **Company Alert** - Allows you to receive email notification when a company you are monitoring lodges a document with ASIC
- **Banned and Disqualified Registers** - Search ASIC's registers for persons who have been banned or disqualified under provisions of the Corporations Act 2001.

Other searches available include:

- OFFERlist Search
- Professional Registers
- AFS Licensees Register

- Authorised Representative Registers
- Enforceable undertakings Register

Visit the [ASIC website](#) for more information on searching services, or to perform a search.

ASIC online searches provide a basic amount of information for free. You can buy additional company information, such as company address and officeholder details, as a full company search, also called a company extract from [Information Broker](#) or [ASIC Service Centres](#).

## ASIC contact details

Website: [www.asic.gov.au](http://www.asic.gov.au)

Email: [info.enquiries@asic.gov.au](mailto:info.enquiries@asic.gov.au)

Phone from Australia 03 5177 3988

Phone from New Zealand and Overseas +613 5177 3988

## Other useful links

### Australian Governments Business Entry Point website

[www.business.gov.au](http://www.business.gov.au)

This is an online government resource for the Australian business community. It provides business with a wide range of services and information about start-up, taxation, licensing and legislation, as well as significant transactions such as taxation compliance and licence applications.

The BEP enables businesses to comply with government requirements more simply and conveniently by providing free online access to essential information and services. The site is continuously being refined and progressively offers more online transactions in response to Australian business needs.

### FIDO, Australian Securities & Investments Commission

#### Financial Tips and Safety Checks

<http://www.fido.asic.gov.au/fido/fido.nsf>

FIDO is the Australian Securities & Investments Commission's consumer protection website. In this role ASIC aims to protect investors, superannuants, depositors and insurance policy holders. They also regulate and enforce laws that promote honesty and fairness in financial products and services, in financial markets, and in Australian companies.