

## AUSTRALIA

(Fees quoted are exclusive of VAT)

ASIC is (Australian Securities & Investments Commission) the body that registers Australian companies and branches. The two main types of companies are:

Pty Ltd (Proprietary Limited, private limited company) which is broadly similar to the UK Limited, the Dutch BV, the German GmbH, and the French Sarl. Different rules apply to small and to large proprietary (Pty Ltd) companies.

Ltd (Limited, the public limited company) which is broadly similar to the UK PLC (not to the UK Limited), the Dutch NV, the German AG, the Brazilian SA and the French SA.

### Requirements

- All Australian companies must have a registered office and a registered agent in Australia.
- There is an obligation to maintain statutory books in Australia. Anyone may inspect or obtain a copy.
- A director of an Australian company must be a natural person (a company may not be a director). Director's details are publicly available. All Australian companies need at least one director who is 'ordinarily resident' in Australia.
- Unanimous written resolutions are acceptable without actual meeting of directors;
  - The directors of a company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
  - Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last director signs.
- Public officer is required, the details are not publicly available.
- The private company need only have one shareholder. Shareholder details are publicly available however nominee shareholders can be used.
- Company Secretary is optional, if appointed details are publicly available.
- Australian company will have an ABN and an ACN.
- ABN = Australian Business Number - relevant for taxation.
- ACN = Australian Company Number - a nine-digit identification number required for each Australian company.
- ATMOSS = Australian Trade Marks Online Search System
- If the company name registered with the ASIC contravenes a registered trademark, the company will be liable to pay damages.

### Articles

Before applying to register a company decision requires to be made regarding how the company will be internally governed.

The alternatives are replaceable rules, its own constitution, or a combination of both

The basic rules for internally managing a company are included in the Corporations Act 2001 (Corporations Act) as 'replaceable rules'.

A company may use the replaceable rules for its internal governance. This means the company does not need to have its own written constitution with the expense of keeping the constitution up to date with the law, even in the event that the replaceable rules are amended.

A proprietary company cannot be governed by replaceable rules if it has only one director who is a sole shareholder. Special rules apply, see below.

Sole Member/ Director Proprietary Companies; a proprietary company with a single member (shareholder) who is also the sole director has no need for a formal set of rules governing its internal relationships. Such companies do not have to adopt a constitution (although they may do so if they wish).

If an additional director is appointed or an additional person becomes a member, the replaceable rules will automatically apply to the company, unless they are replaced by a constitution adopted by the company.

## Company names

- Can be reserved
- Certain words and phrases cannot be used in company names without the approval of a specified Minister or government agency. Words that cannot be used include:
  - 'building society'
  - 'trust'
  - 'university'
  - 'chamber of commerce', and 'chartered.'
  - Also prohibited are words suggesting a misleading connection with government or the Royal Family.
  - ASIC may also refuse to register certain names if they are considered offensive or suggest illegal activity.

It is not necessary to give the company a name. The name of the company on registration can be its Australian Company Number (ACN), the unique number ASIC gives a company when it is registered.

## Accounting

- An audit is required dependent on the type of company and the level of turnover.

Public companies, large proprietary companies and, in some circumstances, small proprietary companies must provide ASIC with a copy of its audited financial report and directors' report within four months of the end of its financial year. The directors of a company (including small proprietary companies) that have not lodged a financial report with ASIC within the period of 12 months before its review date must pass a solvency resolution within two months after its review date. The company must notify ASIC within seven days after the two month period where no solvency resolution is passed or within seven days after a negative solvency resolution is passed.

**A company is large proprietary company** for a financial year if it satisfies at least two of the following three tests:

- the consolidated revenue for the financial year of the company and the entities it controls (if any) is A\$25 million
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is A\$12.5 million
- the company and the entities it controls (if any) have 50 or more employees at the end of the financial year.

**A company is small proprietary company** for a financial year if it satisfies at least two of the following three tests:

- the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than A\$25 million
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than A\$12.5 million

- the company and the entities it controls (if any) have fewer than 50 employees at the end of the financial year
- Shelf companies are available
- 2 days on receipt of due diligence

## Tax:

- Financial statements can be prepared in any currency
- Tax returns and payments are required to be in Australian Dollars
- Corporate tax and GST is only levied at the Federal level but states levy stamp duty
- Australia has a GST system - a VAT-based tax
- Australia taxes non-residents on the gain on sale of shares in Australian companies if the shares have been held less than 12 months or the underlying company is land rich, i.e., predominantly holds Australian real estate
- The tax year commences on 01 July but this can be changed
- Stamp duty is no longer payable on the transfer of shares
- Australian companies can derive tax exempt income, for example dividends from foreign subsidiaries and profits from foreign branches can be exempt
- Australia has a 30% dividend withholding tax
- Dividends are exempt from withholding tax if paid out of income that has been taxed in Australia ('franked dividends')
- Tax losses can be carried forward indefinitely
- Australia treats payments for the lease of equipment - such as an oil rig or a jumbo jet - as a royalty (as do many other countries including, for example, South Africa, Brazil and Poland)
- Royalties are subject to withholding tax at a rate of 30%, but this is reduced by tax treaties
- Australia does not levy withholding tax on management or technical service fees
- A wholly-owned group of Australian companies can be grouped for tax purposes (similar to tax consolidation, fiscal unity, etc., as exists in about 40 other countries)

Test for corporate residency	Incorporated in Aust., or Management & control is in Aust., or Ownership control is in Aust.
Tax system (worldwide or territorial)	Taxed on worldwide income
Corporate tax rate	30%
Exemptions from tax available?	Yes, including foreign PE and dividends (subject to conditions)
Tax consolidation (fiscal unity / group tax) available	Yes

Losses	Carried forward indefinitely, or offset against group companies income
Tax/duty (stamp duty) on issued share capital	Nil
Stamp duty on share transfers	Nil
Tax year (income year) end	30 June

Fees	
Incorporation/Ready Made Company	£1,000
Government Registration Fee	£340
Registered agent and registered office	£400
Annual costs thereafter:	
Registered agent and registered office	£400 per annum
Government Annual Licence Fee <ul style="list-style-type: none"> <li>• Annual ASIC fee (Australian Securities and Investment Commission) = \$218 (roughly £150)</li> <li>• Annual ASIC Lodgment fee = \$121 (roughly £90)</li> <li>• Lodgment of quarterly Business Activity Statement = \$352 (roughly £250)</li> </ul>	£490 per annum
Book keeping on a monthly basis	See above

Nominee Services Available	
Resident Nominee Director	£4,000 per annum plus time spent
Resident Nominee Secretary	£500 per annum
Appointment of Public accountant	£400 per annum plus time spent
Nominee Director	£300 per annum
Nominee Shareholder	£175 per annum

Additional charges apply for courier and notarisation / apostille.

Maintenance Services, fees will be charged for additional services on a time-spent basis.

PLEASE NOTE WE REQUIRE ALL CLIENTS TO SATISFACTORILY COMPLETE OUR DUE DILIGENCE REQUIREMENTS AND COMPLY WITH THE MONEY LAUNDERING REGULATIONS 2007.