

## **Are you a foreign company intending to carry out business in Australia?**

If so, then you have two broad options when it comes to entering the Australian market. The majority of foreign companies conduct business by the means of Incorporation of an Australian company in which they hold shares or through the registration of an Australian Branch.

*Please note: this paper is not intended in anyway to be an exhaustive discussion of the issues to be considered but rather a starting point for evaluating your options.*

### **Option 1: Incorporation**

A foreign company may establish an Australian subsidiary by either registering a new company or by acquiring a recently incorporated shelf company which has not yet engaged in trade. Companies apply for incorporation through the Australian Securities and Investment Commission (ASIC).

The process of becoming incorporated in Australia for a foreign company is like the process of incorporating an Australian company and some of the statutory requirements are similar which can pose a bit of an obstacle if not thought through beforehand.

For example: foreign companies are still required to have at least one resident Australian director and hold a registered office in Australia. Also, according to ASIC *“if your registered office will not be occupied by the company but by, for example, your solicitor or accountant, then the occupier must give written consent for the company to use that address.”*

If you are considering this option, please contact Sarah Guy and we can advise you further on incorporating a company in Australia.

### **Option 2: Australian Branch**

The establishment of an Australian branch may be preferable to incorporating a subsidiary if one of the objectives is to consolidate the financial results of the company in the place of residence of the overseas company. This option, under the Corporations Act 2001 requires the company have a registered office in Australia as well as an appointed local agent.

A foreign company cannot carry on business in Australia without first registering under Part 5b.2 of the Corporations Act 2001. Whether a foreign company is 'carrying out business' will depend on the specific circumstances of every individual case. If a company is in doubt, then they should seek legal advice.

ASIC has provided an outline of which foreign companies must register, how they do so and their post registration obligations. You can find more information here: <https://www.austrade.gov.au/International/Invest/Guide-to-investing/Setting-up-a-business>.

If you require assistance in the registration process then please contact Sarah Guy Pty Ltd and we can support you.

## **Other Considerations**

When intending to carry out business in Australia there are several other things that you may need to consider:

- Visa and Immigration for business
- Corporate Tax
- Goods and Services Tax
- Personal tax
- Employment Law
- Intellectual property
- Consumer law
- Anti-trust and competition law
- Environmental law in Australia
- Foreign Investment Review board

If you are a foreign company intending to carry on business in Australia then be sure to refer to the information available here and provided by ASIC.

Sarah Guy is able to assist you whether it be with incorporating a company in Australia or establishing an Australian branch. We can also help you evaluate the other considerations that must be taken into account before you do so along with recommending legal and accounting firms to assist in the registration or incorporation process.

**For further information, please contact Sarah Guy and/or visit the website of Austrade for greater detail at:**

<https://www.austrade.gov.au/International/Invest/Guide-to-investing/Setting-up-a-business>

*This paper is intended to be used as a guide only. It is not, and is not intended to be, advice on any specific matter. We do not accept responsibility for any acts or omissions resulting from reliance upon the content of this article. Before acting on the basis of any material in this article, we recommend that you consult your professional adviser.*