



MARSHALL MICHAEL
CHARTERED ACCOUNTANTS

DOING BUSINESS IN AUSTRALIA



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1. MARSHALL MICHAEL PTY LTD

Large Firm Expertise, Small Firm Relationships

Marshall Michael is an independent, boutique advisory firm located in West Leederville, Perth with the expertise of a large firm and the client relationships of a small firm.

At Marshall Michael, we have a reputation for being at the forefront of assisting like-minded progressive business owners and individuals in their pursuit of business success, wealth creation and lifestyle rewards.

Our team is dedicated to:

- providing our clients with high quality value add services through best business practice
- building long and trusted relationships with our clients by providing a comprehensive, innovative and proactive approach to help them achieve their goals
- improving the knowledge and financial position of everyone we meet through education and communication

Marshall Michael have prepared this guide for use by individuals planning on coming to Australia as business owners.

2. DOING BUSINESS IN AUSTRALIA

To do business in any new country a good grasp of the business environment you are entering is essential. The information contained in this guide is not intended to be a complete summary of doing business in Australia. This is a guide highlighting some of the more essential matters to be considered prior to investing in Australia.

Our Economy

Australia has one of the strongest, most competitive, open and flexible economies in the world. Australia is one of the largest economies in the Asia Pacific region after Japan, China and Korea. China is Australia's largest trading partner.

Multinational companies view Australia as presenting the best business case for regional headquarters to target the dynamic Asia Pacific region. Key business centres in Australia include Sydney (New South Wales), Melbourne (Victoria), Brisbane (Queensland) and Perth (Western Australia).

The Government has recognised the benefits of open markets by more than halving tariff rates on imports over the past decade. For business, this has meant lower input costs and increased productivity and efficiency.

Changes to the tax system have also led to major reductions in business costs, especially for exporters. Australia's corporate tax rate of 30 per cent is very competitive when compared with other major economies, with higher company income tax rates applying in the United States, China, Japan, Germany, France and India.

Australia is a leading financial centre in the Asia Pacific region. Australia's alliance with markets throughout the region is increasingly providing business people with a comprehensive range of financial services in the Asia Pacific region.

Foreign Investment

The Government welcomes and encourages foreign investment consistent with community interests. Australia's screening process for foreign investment is transparent and very liberal.

The Foreign Investment Review Board (FIRB) is a non-statutory body that examines proposals by foreign persons to undertake direct investment in Australia and makes recommendations to the Government on whether those proposals are suitable for approval under the Government's Foreign Investment Policy and whether they are in compliance with the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA).

FIRB also provides information on Australia's foreign investment policy guidelines and, where necessary, provides guidance to foreign investors to ensure compliance with the Government's policy.

Legal

The Australian legal system is a mixture of common law historically dependent for its legal validity on a series of British statutes, notably including the Commonwealth of Australia Constitution Act 1900 and written constitutional legislation implemented by either the states or territories of Australia or the Federal Government.

The contract of employment is very important once disputes arise the conditions needs to be clearly listed including the rights, duties of both parties. While contracts can exist which are verbal in nature written contracts are recommended.

Business Structures

A person can conduct business in Australia as a sole trader, in partnership, through a trust, through a joint venture or as a corporation. Companies that are incorporated outside of Australia that wish to carry on business in Australia must either incorporate a wholly owned or partly owned subsidiary company in Australia or register a branch office in Australia.

Most foreign companies conduct business in Australia through a wholly or partly owned subsidiary or through an Australian branch.

Foreign companies may establish an Australian subsidiary by registering a new company or by acquiring a recently incorporated shelf company which has not yet engaged in trade.

The Corporations Act 2001 (Cth) (“the Corporations Act”) governs the activities of companies in Australia and this act requires the company appoint individual “officers/directors” to ensure the company fulfils its legal obligations whether defined under this legislation or others.

In the case of a public company at least two of the directors must be Australian residents while in private companies there is one director who ordinarily resides in Australia.

The company secretary (acting as executive officer of the Board of Director) is also required to reside in Australia although there is nothing to prohibit one of the resident directors acting in a dual capacity.

In addition every company must have a Public Officer (again a resident of Australia) who is responsible for ensuring compliance with all things which are required under Australian income tax legislation.

The Corporations Act provides that a company may be:

- unlimited with share capital
- limited by shares
- limited by guarantee
- no liability (although this only applies if the company’s sole objects are mining or mining related objects).

The most common form of business entity in Australia is a company limited by shares. Companies limited by shares are either proprietary companies or public companies. Only public companies may be listed on the Australian Securities Exchange Limited (ASX).

Proprietary companies are often used for private ventures or as subsidiaries of public companies.

A proprietary company:

- may either be classified as a large proprietary company or a small proprietary company depending on certain criteria
 - results in the liability of the shareholders upon winding up of the company being limited to the amount unpaid on their shares (if any)
 - may not have more than 50 non-employee shareholders
 - cannot engage in fundraising activities in Australia that would require the lodgement of a prospectus or other disclosure document, except in limited circumstances
 - must have at least one Australian resident director but need not have a secretary
 - must have the words “Proprietary Limited” or “Pty Ltd” in its name if it is a limited proprietary company.
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Public companies:

- are often used for larger public ventures
- may have an unlimited number of members/shareholders
- must have at least three directors, at least two of whom must ordinarily reside in Australia
- must have at least one company secretary that ordinarily resides in Australia
- may issue a prospectus for the offer of securities (subject to applicable laws)
- can list on the ASX
- must have the word “Limited” or “Ltd” at the end of its name if it is a limited public company

Auditors and Financial Reporting

All public companies must appoint an auditor within one month of the date of their incorporation.

The following entities are required to prepare an annual financial report which must be audited:

- all public companies
- all large proprietary companies
- small proprietary companies which are controlled by foreign entities.

ASIC will, in certain cases, grant relief from the requirement to prepare and audit financial reports. Relief from audit can be sort in certain circumstances defined under Section 45A of the Act and Class order 98/1417 for the following:

- large proprietary companies in which a foreign company has an interest
- small proprietary companies controlled by foreign companies.

Under the Corporations Act auditors have obligations with respect to independence, disclosure and financial reporting.

Setting up in Australia:

There are a lot of process involved in incorporating a proprietary company with Australian Securities and Investments Commission (ASIC).

This including:

- Complete and lodge ASIC Form 201 “Application for Registration as an Australian Company”; Obtain a certificate of incorporation and an Australian Company Number (ACN)
- Register for ABN with the Australian Taxation Office (ATO) which normally takes 28 days on receipt of application
- Sign up for Worker Compensation Insurance at an insurance agency

Marshall Michael boasts an extensive cliental base from such diverse industries as: mining, construction, engineering, property developing, food supplying, transport and many more. We can offer a full portfolio of business advisory services, ensuring your business grows healthily. We talk in everyday language for things like tax and business compliance requirements. Please feel free to contact Stephen Marshall or Tony Xu to setup an obligation free meeting.



This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice.

Please contact MARSHALL MICHAEL PTY LTD to discuss these matters in the context of your particular circumstances. Marshall Michael Pty Ltd, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

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