

Bird & Bird

# Setting up a business in Australia

2025



# Why conduct business in Australia?

*Australia is a diverse, multicultural and highly educated country that offers foreign investors a robust, well-regulated economy, advanced infrastructure and a stable political environment, making it an attractive place to invest and do business.*

*Located in a time zone adjacent to many fast-growing Asian markets, businesses in Australia are well aligned to expand their global footprint into the region.*



# Business structures

*There are a number of options open to foreign investors wishing to do business in Australia.*

The two most common options are incorporating an Australian proprietary company limited by shares and registering as a foreign company. The decision will depend on a number of factors, including the type of business being conducted and tax considerations.

Australian subsidiary company	Registered foreign company
Overview	
<ul style="list-style-type: none"> <li>• Most commonly a proprietary company limited by shares</li> <li>• Shares may be wholly owned by the foreign parent (subject to applicable foreign investment controls)</li> <li>• The company is a separate legal entity and can hold assets and owe obligations in its own name</li> <li>• Directors are subject to certain statutory and common law duties</li> </ul>	<ul style="list-style-type: none"> <li>• Not a separate legal entity</li> <li>• Liabilities are those of the foreign company</li> <li>• Directors are subject to certain statutory and common law duties</li> </ul>
Registration requirements	
<ul style="list-style-type: none"> <li>• Register with the Australian Securities and Investments Commission (“ASIC”) as a proprietary company limited by shares</li> </ul>	<ul style="list-style-type: none"> <li>• Register as a ‘foreign company’ with ASIC</li> <li>• Registration is compulsory for foreign companies ‘carrying on business in Australia’</li> </ul>
<b>Timeframe:</b>	<b>Timeframe:</b>
<ul style="list-style-type: none"> <li>• One business day (assuming all information supplied is in order and there are no issues with requested company name)</li> </ul>	<ul style="list-style-type: none"> <li>• Several weeks minimum, depending on how quickly supporting documents can be prepared</li> </ul>
<b>Requirements:</b>	<b>Requirements:</b>
<ul style="list-style-type: none"> <li>• Desired company name must be available</li> <li>• A physical registered office address in Australia</li> <li>• A physical principal place of business address in Australia</li> <li>• At least one Australian resident director. All directors must apply for director identification numbers (“DINs”) (see overleaf for more information)</li> <li>• Adopt a company constitution (if desired; it is usual to do so)</li> <li>• Lodge the application form and supporting documents with ASIC (online lodgement via company registration agent)</li> <li>• Pay the prescribed fee</li> </ul>	<ul style="list-style-type: none"> <li>• Desired company name must be available</li> <li>• A physical registered office address in Australia</li> <li>• At least one local agent who is an Australian resident and has a physical address in Australia</li> <li>• Directors of the ‘foreign company’ must apply for DINs</li> <li>• Lodge the application form and supporting documents with ASIC (paper-based process, sent by post)</li> <li>• Pay the prescribed fee</li> <li>• ASIC will register the foreign company and issue an Australian Registered Body Number</li> </ul>

Australian subsidiary company	Registered foreign company
<ul style="list-style-type: none"> <li>Maximum 50 non-employee shareholders and cannot raise money from the public (with some exceptions)</li> <li>ASIC will register the company and issue an Australian Company Number</li> </ul>	
<b>Subsequent requirements:</b> <ul style="list-style-type: none"> <li>Apply for an Australian Business Number ("<b>ABN</b>")</li> <li>Apply for a tax file number ("<b>TFN</b>") with the Australian Taxation Office ("<b>ATO</b>")</li> <li>Appoint a public officer for taxation purposes within 3 months of carrying on business or deriving income</li> </ul>	<b>Subsequent requirements</b> <ul style="list-style-type: none"> <li>Apply for an ABN and TFN</li> <li>Appoint a public officer for taxation purposes within 3 months of carrying on business or deriving income</li> </ul>
<b>Other registrations:</b> <ul style="list-style-type: none"> <li>Where appropriate, register for:</li> <li>Goods and Services Tax ("<b>GST</b>") within 21 days of incorporation if annual turnover is expected to exceed \$75,000</li> <li>Payroll tax in each state and territory (as applicable)</li> <li>Pay As You Go withholding ("<b>PAYG</b>") from wages and salary payments before the first payment withholding amount is required</li> <li>Fringe Benefits Tax ("<b>FBT</b>") during an FBT year (1 April to 31 March) if liable to pay FBT during that year</li> </ul>	<b>Other registrations:</b> <ul style="list-style-type: none"> <li>Where appropriate, register for GST, Payroll tax, PAYG and FBT</li> </ul>
<b>Financial reporting obligations</b> <ul style="list-style-type: none"> <li>Must lodge annual audited financial report with ASIC (unless relief – which must be notified to ASIC and then confirmed annually – is available)</li> </ul>	<ul style="list-style-type: none"> <li>Must lodge financial statements for the foreign company with ASIC (unless relief – which must be confirmed annually – is available)</li> </ul>
<b>Other reporting obligations:</b> <ul style="list-style-type: none"> <li>Company details to be kept up to date with ASIC – time limit for filing applies</li> <li>Annual review process and fee applies</li> </ul>	<ul style="list-style-type: none"> <li>Company details to be kept up to date with ASIC – time limit for filing applies</li> <li>Annual review process and fee applies – annual return to be lodged</li> </ul>
<b>Taxation</b> <ul style="list-style-type: none"> <li>Taxed in Australia on income and gains made within and outside Australia</li> <li>Withholding tax for certain dividends, interest and royalty payments to parent is payable (the tax rate will depend on double taxation treatment)</li> </ul>	<ul style="list-style-type: none"> <li>Generally taxed in Australia only on income and gains made in Australia</li> <li>Remittance of branch profits is exempt from withholding taxes</li> <li>May be eligible for tax exemption if double taxation treaty is in place with company's country of incorporation</li> </ul>

## Director Identification Numbers (DINs)

It is now a requirement for directors of Australian companies and registered foreign companies to obtain a DIN. The DIN application must be made prior to being appointed as a director (or prior to registration for a foreign company).

The steps for Australian resident directors are as follows:

Details	
Download app	
1	<ul style="list-style-type: none"><li>• The director must set up a myID by downloading the myID app from the Apple App Store or Google Play Store</li><li>• Provide full name, DOB and email address</li><li>• The director will be prompted to choose their identity strength. The director must have a myID identity strength of <i>standard</i> or <i>strong</i> in order to apply for a DIN</li></ul>
Required documents	
2	<p>The director will require:</p> <ul style="list-style-type: none"><li>• tax file number</li><li>• residential address</li><li>• for those with a <i>standard</i> identity strength, at least two ID documents in order to verify their identification</li></ul>
Complete application	
3	<ul style="list-style-type: none"><li>• Once the above steps are completed, the director can apply for their DIN. The process should take no longer than 5 minutes</li></ul>

For any persons who are not able to create a myID account with at least standard identity strength (which includes most overseas residents), it is necessary to complete a hard copy application and send it by post to Australian Business Registry Services ("ABRS").

The steps for foreign residents to apply for a DIN are as follows:

Details					
Required documents					
1	<p>The director must gather eligible identification documents, being certified or apostilled copies of one primary and one secondary document, or alternatively two primary documents (translated into English if necessary). Notaries public, or staff at the nearest Australian embassy, high commission or consulate, including consulates headed by Austrade honorary consuls, are able to certify these documents.</p> <table><tr><th>Primary identity documents</th><th>Secondary identity documents</th></tr><tr><td><ul style="list-style-type: none"><li>• Birth certificate</li><li>• Passport</li></ul></td><td><ul style="list-style-type: none"><li>• National photo identification card</li><li>• Foreign government identification</li><li>• Driver's licence</li><li>• Marriage certificate</li></ul></td></tr></table>	Primary identity documents	Secondary identity documents	<ul style="list-style-type: none"><li>• Birth certificate</li><li>• Passport</li></ul>	<ul style="list-style-type: none"><li>• National photo identification card</li><li>• Foreign government identification</li><li>• Driver's licence</li><li>• Marriage certificate</li></ul>
Primary identity documents	Secondary identity documents				
<ul style="list-style-type: none"><li>• Birth certificate</li><li>• Passport</li></ul>	<ul style="list-style-type: none"><li>• National photo identification card</li><li>• Foreign government identification</li><li>• Driver's licence</li><li>• Marriage certificate</li></ul>				

Details	
Complete and sign application	
2	Complete and sign the application, a copy of which can be found here: <a href="#">Application for a director identification number - for people living outside Australia</a> .
Submit application	
3	Submit the application and supporting materials to the ABRS by post to the following address: Australian Business Registry Services Locked Bag 6000 Albury NSW 2640 Australia



The Corporate team's knowledge is diverse and their ability to deliver complex advice in a simplified manner is outstanding. They made me feel comfortable throughout the process, without feeling intimidated by the volume of legal issues we were covering.

*Legal 500 Asia-Pacific, 2023*



Bird & Bird is excellent at managing client expectations and timeframes, and has an exceptional knowledge of the relevant legal principles and processes

*Client feedback, 2024*



# Establishing a business in Australia

A foreign investor that wishes to do business in Australia, or to invest in an Australian entity, business, or land may require the prior approval of the Australian Foreign Investment Review Board under Australia's foreign direct investment ("FDI") laws. In certain situations, if FDI approval is required and is not obtained before proceeding with an acquisition, the Australian Treasurer has the power to unwind the transaction and the foreign investor and those involved in the breach of Australian FDI laws could be subject to various civil and criminal penalties.

A number of factors determine if FDI approval is required, including the identity and country of origin of the foreign investor (and its ultimate beneficial interest holders), the nature and type of the investment, and the value of the investment.

Broadly speaking, FDI approval will be required if a foreign investor proposes to acquire a substantial interest (20% or more) in an Australian entity that is valued above \$339 million (or up to \$1.464 billion in the case of investors from certain countries with a free trade agreement in place with Australia). Certain factors, such as the foreign investor being a 'foreign government investor', or the business of the entity being acquired being a 'national security business', might mean that any acquisition of a substantial interest in an Australian entity will be subject to FDI approval, regardless of the value of the entity.

FDI approval may also be required for a foreign investor to acquire an interest in Australian land, including agricultural land, developed commercial land and mining or production tenements where the value of the interest exceeds the applicable monetary threshold, unless an exemption applies. An 'interest in Australian land' includes entering into a lease to occupy Australian land for a term (including any renewals) exceeding 5 years. FDI approval is generally always required for all acquisitions of 'national security land', vacant commercial land or residential land, regardless of value.

All foreign persons that are 'foreign government investors' must also obtain FDI approval before

acquiring a direct or indirect interest in any Australian entity, starting a new business in Australia or acquiring an interest in Australian land, regardless of value.

A fee is payable on submission of an application for FDI approval. Depending on the circumstances, approval typically takes 1-3 months (or longer for more complicated investments or investments that are sensitive or involve national security concerns). Applications may be approved subject to any number of conditions.

## Register of Foreign Ownership of Australian Assets

When a foreign investor acquires an interest in certain Australian assets, it must register that interest on the Register of Foreign Ownership of Australian Assets (**Register**). Registrable interests include: an interest in an Australian company or Australian business where FDI approval was required for the acquisition of the interest; an interest in Australian land or exploration tenement; and an interest in certain Australian water rights. Generally, the foreign investor's interest must be submitted to the Register within 30 days of the foreign investor acquiring the interest.

Foreign investors are also required to update the Register if their circumstances change. For example, if the foreign investor ceases to be a foreign person or they no longer hold an interest in the relevant asset. Generally, any update to the Register must be submitted within 30 days of the relevant change in circumstances.

## Employment and immigration

In general, employers and employees can negotiate the terms and conditions of employment. However, the contract of employment will be subject to employment legislation such as the *Fair Work Act 2009* (Cth) ("**Fair Work Act**") and industrial instruments.

The Fair Work Act contains 11 non-excludable minimum employment conditions known as the National Employment Standards (**NES**). The NES

apply to all employees in the private sector and include paid leave, parental leave, redundancy pay, maximum working hours, flexible working arrangements and right to superannuation. All employers are required to make contributions to the employee's chosen pension plan (known as a 'superannuation fund'). Minimum contributions are calculated from the prescribed rate (12%) of the employee's earnings. Employers are required to have a 'default' superannuation fund for employees who do not choose a particular fund.

All foreigners who wish to work in Australia must hold a valid visa that entitles them to work. There are a number of options available including short-term business and work visas, as well as sponsorship of overseas employees for long-term working visas.

## Privacy

The *Privacy Act 1988* (Cth) is the primary legislation which protects privacy in Australia. Other federal and state-based privacy laws also govern the collection, use, disclosure and transfer of personal and health information in Australia.

While disclosure of personal information to overseas entities is allowed, the disclosing entity remains generally responsible for how the information is handled overseas.

## Intellectual property

Australia has a robust framework of intellectual property rights protection and enforcement mechanisms that are of a standard consistent with the United States and Europe.

Additionally, Australia is also a signatory to a number of international agreements that streamline the requirements for obtaining protection of patents, trade marks, and designs in a number of countries.

## Contracts

Australian law recognises the basic principle of freedom of contract and, in general, parties are free to choose the terms and content of their agreements, subject to certain federal and state legislation. This includes the *Contracts Review Act 1980* ("NSW") which gives courts general powers to deal with 'unjust' contracts and the Australian Consumer Law ("ACL") which provides protections for consumers and small businesses by prohibiting unfair terms in standard form contracts. Courts may

make orders voiding any unfair contract terms and varying the relevant contract, and a party that relies on an unfair contract term may be subject to penalties.

## Competition and consumer law

The Australian Competition and Consumer Commission ("ACCC") implements and enforces the *Australian Competition and Consumer Act 2010* ("CCA"). The CCA aims to promote fair trading and competition, prohibiting anti-competitive conduct, cartel conduct, exclusive dealing, resale price maintenance, misuse of market power, and anti-competitive mergers.

As of 1 January 2026, it is also mandatory to obtain clearance from the ACCC for acquisitions of companies or businesses that have a connection to Australia and meet one of various monetary thresholds. Broadly speaking, this regime captures acquisitions that will result in the creation of a large corporate groups, acquisitions by existing large corporate groups or serial acquisitions, unless an exemption applies. Clearance must be obtained before the acquisition can take place and a fee is payable on submission of an application to the ACCC.

The ACCC also administers the ACL. The ACL protects consumers by prohibiting misleading and deceptive conduct and unconscionable conduct, prohibiting unfair contract terms in standard form consumer contracts, and establishing a regime for statutory consumer guarantees which apply to goods and services purchased by customers and which cannot be excluded, restricted or modified by contract. Breaches of the CCA can attract significant criminal and civil penalties including fines, imprisonment and other orders.

## Tax

Companies incorporated in Australia are subject to a corporate tax of up to 30% on their global income (depending on their annual turnover). If the company is a registered foreign company, only income derived from Australian sources is subject to corporate taxes. In addition, withholding tax applies to payments of certain dividends, interest and royalties to non-Australian entities. The rate depends on the type of payment and any taxation treaties between Australia and the entity's country of origin. Australia does not impose a separate branch remittance tax.



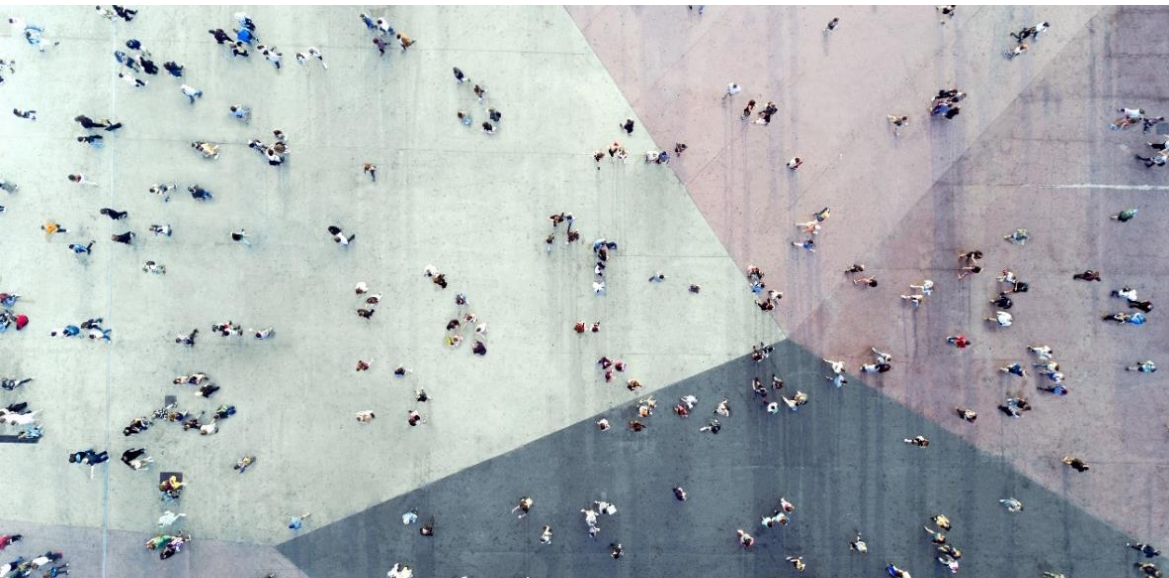
In general, most goods and services supplied to Australian consumers are subject to GST of 10%. Entities that supply such goods or services are required to remit 10% of the taxable value of the goods or services directly to the ATO. Exemptions are available for certain goods and services.

## Real estate

The majority of land in Australia uses the Torrens title system of land registration, in which title or ownership of real estate is created by registration in a central register or record. In general, the

registered owner of land on the system cannot have its title challenged or overturned. Landowners can lease land or part of it to another person on terms agreed by the parties. Some longer-term leases may be required to be registered under the Torrens title system.

Each state and territory (except the Northern Territory) imposes an annual land tax payable by the owners of land, although exemptions may apply. Stamp duty is also imposed on the transfer of real estate, assessed as a proportion of the value of the land.



# About Bird & Bird

*We are a truly international firm, supporting organisations being changed by the digital world or those leading that change. We combine exceptional legal expertise with deep sector knowledge and refreshingly creative thinking, to help clients realise their ambitions.*

## Everything is connected.

With more than 1,400 lawyers and legal practitioners across a worldwide network of 32 offices, Bird & Bird delivers expertise across a full range of legal services. Our specialisms include advice on commercial, corporate, EU and competition, intellectual property, dispute resolution, employment, finance and real estate matters.

The key to our success is our constantly evolving sector-focused approach. Our clients build their businesses on technology and intangible assets, and operate in regulated markets. To better meet their needs we have developed deep industry understanding of key sectors, including automotive, aviation & defence, energy & utilities, financial services, life sciences & healthcare, retail & consumer, media, entertainment & sport and tech & comms.

## What this means for you:

- Expertise in the legal and regulatory framework relating to each sector.
- A more practical, commercial approach, supported by advisors with decades of experience working in the relevant industries.

## International reach

We have offices in key business centres across the globe:

**Europe:** Amsterdam, Bratislava, Brussels, Budapest, Copenhagen, Dublin, Düsseldorf, Frankfurt, The Hague, Hamburg, Helsinki, Lisbon, London, Lyon, Madrid, Milan, Munich, Paris, Prague, Rome, Stockholm and Warsaw.

**Middle East, Asia-Pacific & North Africa:** Abu Dhabi, Beijing, Casablanca, Dubai, Hong Kong, Riyadh, Shanghai, Shenzhen, Singapore, Sydney and Tokyo.

**North America:** San Francisco.

## Excellence in client service

We operate as one truly international partnership: our goals, accounting and profit pool are all shared, as is our commitment to providing our clients with advice from the right lawyers, in the right locations. Our open and engaged business culture allows us to configure quickly and effectively to the commercial pressures and opportunities faced by our clients.

# What clients say



Bird & Bird are very friendly, personable and able to distil quite difficult concepts in a commercial manner.

*Chambers Asia Pacific, 2024*



Bird & Bird does excellent work understanding the goals of the company's business and factoring that into their advice, providing overall very strong legal advice on multiple issues we have worked on with them.

*Chambers Asia-Pacific, 2023*



The Bird & Bird team has a brilliantly broad reach, both intellectually and across borders. Their area of specialty requires a constantly-evolving understanding of developments locally as well as in other territories.

*Legal 500 Asia-Pacific, 2023*



Fantastic customer service and great communication style. They do not over service like many firms but rather understand what is needed and provide practical and to the point advice.

*Legal 500 Asia-Pacific, 2022*



The Bird & Bird team invariably deliver top-quality service and are always available.

*Chambers Asia-Pacific, 2023*



# Thank you

**twobirds.com**

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai • Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • Lisbon • London • Lyon • Madrid • Milan • Munich • Paris • Prague • Riyadh • Rome • San Francisco • Shanghai • Shenzhen • Singapore • Stockholm • Sydney • Tokyo • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.