



GUIDE TO GOING GLOBAL CORPORATE

Australia



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INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Corporate*.

GUIDE TO GOING GLOBAL SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Guide to Going Global* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Guide to Going Global – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Guide to Going Global – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

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AUSTRALIA



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FORM OF ENTITY

Branch

It is possible for foreign companies to conduct business in Australia through a branch office. A foreign company may establish a branch in Australia by registering with the Australian Securities and Investments Commission (ASIC) as a foreign company carrying on business in Australia. It must also appoint a local agent who will be responsible for ensuring the foreign company's compliance with the Corporations Act 2001 (Cth).

Proprietary company

A proprietary company is a limited liability company designed for 50 shareholders or fewer. It is the most common type of company in Australia, and it has the advantage of being simpler and less expensive to administer than a public company. It is managed by a board of directors, which is responsible for making business decisions and overseeing the general affairs of the company. Directors may be appointed by other directors or by shareholders and may be removed by an ordinary resolution of the shareholders.

Public company

Similar in concept to a proprietary company, but there is no limit on the number of shareholders. There is also no limit on the ability of a public company to raise funds from the public, subject to satisfying applicable disclosure requirements.

ENTITY SET UP

Branch

- To establish a branch, the foreign company must be registered with ASIC and assigned an Australian Registered Body Number (ARBN).
- A branch is not a separate legal entity. The foreign company has full legal responsibility for the actions of the Australian branch.
- Must appoint at least 1 local agent.

- The local agent is responsible for the foreign company's compliance with the Corporations Act and may be personally liable for any breaches or penalties.
- Must maintain a registered office in Australia.
- Taxed as a separate entity in Australia; taxed on all income sourced from Australia.
- Foreign Investment Review Board approval may be required before agreements to acquire shares, assets or real property can be entered into.

Proprietary company

- Must have at least 1 but no more than 50 shareholders, excluding employee shareholders.
- Generally, no personal liability of the shareholders beyond the amount agreed to be subscribed for shares.
- Taxed on its earnings at the corporate level; can frank dividends distributed to shareholders.
- Usually has a constitution setting out operational procedures.
- Board of directors has overall management responsibility.
- Shareholders purchase shares in the company at an issue price per share which is generally determined by the board of directors from time to time by reference to their directors' duties. May have numerous classes of shares.
- Cannot engage in fundraising activities that would require disclosure to investors under the Corporations Act (eg, requiring a prospectus to be issued).

Public company

- Must have at least 1 shareholder, but there is no maximum.
- Generally, no personal liability of the shareholders beyond amount agreed to be subscribed for shares.
- Taxed on its earnings at the corporate level; can frank dividends distributed to shareholders.
- Usually has a constitution setting out operational procedures.
- Board of directors has overall management responsibility.
- Shareholders purchase shares in the company at an issue price per share which is generally determined by the board of directors from time to time by reference to their directors' duties. May have numerous classes of shares.
- Can offer shares to the public, but must comply with requirements of the Corporations Act, including issuing a disclosure document, such as a prospectus.

Note: In addition to the above, there are other legal entities that can be established under Australian law, such as unlimited liability companies, companies limited by guarantee and no-liability companies. However, these are very rarely used for business purposes and are not considered further.

MINIMUM CAPITAL REQUIREMENT

Branch

No specified minimum capital requirement.

Proprietary company

No specified minimum capital requirement.

Public company

No specified minimum capital requirement.

LEGAL LIABILITY

Branch

A foreign company has full legal responsibility for the actions of the Australian branch and can sue and be sued in Australia. A local agent may also be personally liable for penalties imposed on the foreign company for contraventions of the Corporations Act.

Proprietary company

A company's shareholders' liability is generally limited to the extent of their initial investment, and the amount, if any, of the issue price of their shares which is unpaid.

Public company

A company's shareholders' liability is generally limited to the extent of their initial investment, and the amount, if any, of the issue price of their shares which is unpaid.

TAX PRESENCE

Branch

A foreign company is taxed as a separate entity in Australia and taxed on all income sourced from Australia. As the foreign company is carrying on an enterprise in Australia, it will also be required to register for Goods and Services Tax (GST).

Proprietary company

The company is taxed at a fixed rate on its income and capital gains. Profits are usually distributed by way of dividend. Dividends may be "franked" in effect to give Australian tax resident recipient shareholders a credit for the tax paid by the company.

Public company

The company is taxed at a fixed rate on its income and capital gains. Profits are usually distributed by way of dividend. Dividends may be "franked" in effect to give Australian tax resident recipient shareholders a credit for the tax paid by the company.

INCORPORATION PROCESS

Branch

A foreign company's registration with ASIC has the effect of establishing a branch office. The foreign company wishing to apply for registration should reserve the company's name to ensure that it is available in Australia and must lodge with ASIC an application form, together with a certified – and translated, if not in English – copy of the company's certificate of registration and constituent documents. Once the application is lodged, processing may take up to 28 days.

Proprietary company

An application for registration as an Australian company is required to be lodged with ASIC with the prescribed fee. Upon incorporation, ASIC will issue to the company a certificate of incorporation and an Australian company number (ACN). Taxation registrations are separate from the incorporation process.

Public company

An application for registration as an Australian company is required to be lodged with ASIC with the prescribed fee. Upon incorporation, ASIC will issue to the company a certificate of incorporation and an ACN. Taxation registrations are separate from the incorporation process.

BUSINESS RECOGNITION

Branch

Less common – and thus less well known to third parties – than a subsidiary.

Proprietary company

Well regarded and widely used.

Public company

Well regarded and widely used. All Australian companies listed on the Australian Securities Exchange (ASX) are public companies.

SHAREHOLDER MEETING REQUIREMENTS

Branch

Not applicable for this jurisdiction.

Proprietary company

Not required to hold an annual general meeting, but actions requiring shareholder approval require a resolution to be passed by the shareholders holding the requisite majority of voting shares at a shareholders' meeting or approved by all shareholders by way of a written resolution. The requisite majority is most commonly a simple majority, but it is 75 percent for certain matters.

Public company

Must hold an annual general meeting within 18 months of incorporation and within 5 months of the end of its financial year.

Other meetings may be held as required.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Branch

Not applicable for this jurisdiction.

Proprietary company

As required (no prescribed minimum). Usually at least 1 meeting is held each year (eg, to approve accounts or confirm solvency).

Public company

As required (no prescribed minimum). Usually at least 1 meeting is held each year (eg, to approve accounts or confirm solvency).

ANNUAL COMPANY TAX RETURNS

Branch

Must lodge a (federal only) company tax return each year, even if the business does not expect to pay any income tax.

Proprietary company

Must lodge a (federal only) company tax return each year, even if the business does not expect to pay any income tax.

Public company

Must lodge a (federal only) company tax return each year, even if the business does not expect to pay any income tax.

BUSINESS REGISTRATION FILING REQUIREMENTS

Branch

A balance sheet, profit and loss account, and cash flow statement must be lodged with ASIC each year.

Proprietary company

A company must confirm its corporate details and pay a review fee to ASIC each year. See also "Annual Corporate Maintenance Requirements."

Public company

A company must confirm its corporate details and pay a review fee to ASIC each year. See also "Annual Corporate Maintenance Requirements."

BUSINESS EXPANSION

Branch

No need to change as business expands.

Proprietary company

No need to change as business expands, but financial statement filing requirements depend on revenue, gross assets and number of employees.

Public company

No need to change as business expands.

EXIT STRATEGY

Branch

Cessation: Within 7 days after ceasing to carry on business in Australia, a registered foreign company must lodge written notice that it has so ceased.

Dissolution of foreign company: If ASIC receives notice from a local agent of a registered foreign company that the foreign company has been dissolved or deregistered in its place of incorporation, ASIC must remove the foreign company's name from the register.

Proprietary company

Deregistration: If there are no liabilities and minimal assets. Application to deregister is lodged with ASIC.

Liquidation: If company is insolvent or there are significant assets or liabilities to be dealt with. A formal process involving the appointment of a liquidator, providing proof of debts, realizing assets, paying creditors and distributing any surplus to shareholders.

Public company

Deregistration: If there are no liabilities and minimal assets. Application to deregister is lodged with ASIC.

Liquidation: If company is insolvent or there are significant assets or liabilities to be dealt with. A formal process involving the appointment of a liquidator, providing proof of debts, realizing assets, paying creditors and distributing any surplus to shareholders.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Branch

Once the foreign company is registered, it is required to lodge the following with ASIC at least once every calendar year and at intervals of not more than 15 months:

- A copy of its balance sheet, profit and loss statement, and cash flow statement
- Any other documents it is required by law to lodge in its country of origin and
- Payment of the ASIC the prescribed lodgment fee.

Changes to directors of the foreign company must be notified as they occur.

Proprietary company

A proprietary company must confirm its corporate details and pay a review fee to ASIC each year. Depending on whether it qualifies as a "large proprietary company" (determined by reference to revenue, gross assets and number of employees), financial statements may need to be filed each year. The accounting requirements imposed on a proprietary company under the Corporations Act depend on whether the company is classified as a "small proprietary company" or a "large proprietary company." Unless granted relief from ASIC, large proprietary companies are required to prepare an annual financial report which must be audited. A company is classified as a large proprietary company for a particular financial year if it satisfies at least 2 of the following tests:

- Consolidated revenue of the company and the entities it controls is AUD50 million or more for the financial year
- Value of the gross assets of the company and the entities it controls is AUD25 million or more at the end of the financial year and
- The company and the entities it controls have 100 or more employees at the end of the financial year.

Public company

A company must confirm its corporate details and pay a review fee to ASIC each year. An annual financial report must be prepared and audited.

DIRECTOR / OFFICER REQUIREMENTS

Branch

Not required to have a local director, but a registered foreign company must have 1 local agent.

Proprietary company

Must have at least 1 director, and at least 1 director must ordinarily reside in Australia.

Public company

Must have at least 3 directors, at least 2 of whom must ordinarily reside in Australia.

For more information on directors' duties, see our [Global Guide to Directors' Duties](#).

LOCAL CORPORATE SECRETARY REQUIREMENT

Branch

Not required to have a secretary.

Proprietary company

Not required to have a company secretary, but if a company has 1 or more, at least 1 of them must ordinarily reside in Australia.

Public company

Must have at least 1 company secretary, and at least 1 company secretary must ordinarily reside in Australia.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Branch

None beyond the required local agent.

Proprietary company

None beyond the required director.

Public company

None beyond the required directors and company secretary.

LOCAL OFFICE LEASE REQUIREMENT

Branch

Must have a registered office in Australia and inform ASIC of its location. This does not have to be owned or leased by the foreign company.

Proprietary company

Must have a registered office in Australia and inform ASIC of its location. This does not have to be owned or leased by the company, but the person who owns or leases that property must consent to it being the registered office of the company. Corporate records are generally required to be maintained at the registered office.

Public company

Must have a registered office in Australia. This does not have to be owned or leased by the company, but the person who owns or leases that property must consent to it being the registered office of the company. Corporate records are generally required to be maintained at the registered office.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Branch

A company's registered office must not be a PO Box. A company that does not occupy the premises at the address of its registered office must obtain the written consent of the occupier to use the premises as its registered office.

Proprietary company

A company's registered office must not be a PO Box. If the principal place of business is different to the registered office, the company must notify ASIC of the address of the principal place of business. A company that does not occupy the premises at the address of its registered office must obtain the written consent of the occupier to use the premises as its registered office.

Public company

A company's registered office must not be a PO Box. If the principal place of business is different to the registered office, the company must notify ASIC of the address of the principal place of business. A company that does not occupy the premises at the address of its registered office must obtain the written consent of the occupier to use the premises as its registered office.

SUFFICIENCY OF VIRTUAL OFFICE

Branch

No. A registered foreign company must display its name in a conspicuous position outside every office and place of business in Australia. It must also display its place of origin and the words "Registered Office" at its registered office.

Proprietary company

No. Each proprietary company must have a physical registered office in Australia. On registration, the address specified in the application for registration becomes the address of the registered office. The registered office can be changed by resolution of directors, and any change must be notified to ASIC. While a proprietary company is not required to open its office to the public, it must display its name prominently at every place at which it carries on business and is open to the public.

Public company

No. Each company must have a physical registered office in Australia. On registration, the address specified in the application for registration becomes the address of the registered office. The registered office can be changed by resolution of directors, and any change must be notified to ASIC.

The registered office of a public company must be open to the public each business day from at least 10:00am to noon and from at least 2:00pm to 4:00pm, or for at least 3 hours between 9:00am and 5:00pm – exact times may be chosen by the company. A public company must also display its name and the words "Registered Office" prominently at its registered office.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Branch

Allowed.

Proprietary company

Allowed.

Public company

Allowed.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Branch

Provision of a local agent by a third-party service provider is allowed, but internal rules or insurance limitations

may restrict law firm professionals from taking on this role.

Proprietary company

Allowed, but internal rules or insurance limitations may restrict law firm professionals from taking on this role.

Public company

Allowed, but internal rules or insurance limitations may restrict law firm professionals from taking on this role.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Branch

Must have at least 1 local agent – an Australian company or resident in Australia.

Proprietary company

Must have at least 1 director who must ordinarily reside in Australia. If a company has 1 or more company secretaries, at least 1 of them must ordinarily reside in Australia.

There are no nationality requirements for shareholders, but certain acquisitions of shares by non-Australian persons may require notification and approval under Australia's Foreign Investment regime (commonly referred to as FIRB approval).

Public company

Must have at least 3 directors, at least 2 of whom must ordinarily reside in Australia. Must have at least 1 company secretary, and at least 1 company secretary must ordinarily reside in Australia.

There are no nationality requirements for shareholders, but certain acquisitions of shares by non-Australian persons may require notification and approval under Australia's Foreign Investment regime (commonly referred to as FIRB approval).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

None.

Public company

None.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Branch

A local agent is answerable for the doing of all acts, matters and things that the foreign company is required by or under the Corporations Act to do.

Proprietary company

Board of directors has overall management responsibility. Shareholders have no direct management rights but can appoint and remove directors by ordinary resolution.

Public company

Board of directors has overall management responsibility. Shareholders have no direct management rights but can appoint and remove directors by ordinary resolution (notwithstanding anything to the contrary in the constitution of the company or anything to the contrary agreed between the company and the relevant director), and shareholders may be required to approve certain corporate actions and significant transactions.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

For all company types, directors are required to verify their identity with the 'Australian Business Registry Services' (ABRS) as part of the director identification number (director ID) requirement. A director ID is a 15-digit identifier and directors will have one director ID (even where they are directors for more than one company). Director IDs cannot be searched by the public, and ABRS may only disclose a director ID with consent, or to certain government bodies or courts and tribunals.

Foreign directors will need to provide notarized copies of the identification documents when applying for a director ID. Since 5 April 2022, newly appointed directors are required to obtain their director ID prior to their appointment as a director.

Branch

Details of the foreign company's director(s) and local agent(s) are publicly available on ASIC's database.

Proprietary company

Details of directors and shareholders are publicly available on ASIC's database.

Public company

Details of directors are publicly available on ASIC's database. Although public companies are not required to advise ASIC of changes relating to individual shareholders, the share register must still be updated for all

shareholders' changes.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

There must be a minimum of 1 shareholder and a maximum of 50 shareholders, not including employee shareholders. For directors, there must be at least 1 director who must ordinarily reside in Australia.

Public company

There must be a minimum of 1 shareholder, and there is no maximum number. For directors, there must be at least 3 directors, at least 2 of whom must ordinarily reside in Australia.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

A proprietary company must have at least 1 shareholder.

Public company

A public company must have at least 1 shareholder.

REMOVAL OF DIRECTORS OR OFFICERS

Branch

Not applicable – a registered foreign company must always have a local agent who is responsible for any obligations that the foreign company must meet. If a local agent ceases, the foreign company must appoint another agent and notify ASIC of the removal and appointment via lodgment of a form.

Proprietary company

Generally, directors may be removed by shareholders.

Public company

Generally, directors may be removed by shareholders.

REQUIRED AND OPTIONAL OFFICERS

Branch

Not applicable for this jurisdiction.

Proprietary company

A proprietary company may choose (but is not required) to have one or more company secretaries, at least one of whom must ordinarily reside in Australia.

Public company

A public company must have at least 1 company secretary, who must ordinarily reside in Australia.

BOARD MEETING REQUIREMENTS

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

Formally nil, but there is usually at least 1 board meeting per year. Decisions of directors can be effected by a written resolution signed by all directors.

Public company

Formally nil, but there is usually at least 1 board meeting per year. Decisions of directors can be effected by a written resolution signed by all directors.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

Unless otherwise specified in the company's constitution, at least 2 shareholders must be present for the full meeting. A company may pass a resolution without a general meeting being held if all the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

Unless otherwise specified in the company's constitution, the quorum for a directors' meeting is 2 directors. The directors of a company may pass a resolution without a directors' meeting if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the

document.

Public company

Unless otherwise specified in the company's constitution, at least 2 shareholders must be present for the full meeting. A company may pass a resolution without a general meeting being held if all the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors, and the quorum must be present at all times during the meeting. The directors of a company may pass a resolution without a directors' meeting if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Branch

Not necessary in order to register a foreign company.

Proprietary company

Not necessary in order to incorporate.

Public company

Not necessary in order to incorporate.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Branch

A foreign company must lodge the following financial statements with ASIC once a year, unless the foreign company satisfies certain criteria which enables it to rely on the financial reporting relief provided under *ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204*:

- Balance sheet
- Profit and loss statement
- Cash flow statement and
- Any other document the company is required to prepare by the law of its place of origin.

Audit is generally not required provided the statements lodged by the foreign company are considered sufficient by ASIC. ASIC may request audited financial statements to be lodged if previously lodged statements are insufficient.

Proprietary company

A company may decide where to keep the financial records, but, if kept outside Australia, sufficient written information must be kept in Australia to enable true and fair financial statements to be prepared, and the company must give ASIC written notice of the place where the information is kept.

A small proprietary company does not have to have its accounts audited unless:

- It is a "disclosing entity"
- It is controlled by a foreign company and its financial results are not included in any consolidated accounts of the foreign company lodged with ASIC (some exemptions apply) or
- Shareholders holding at least 5 percent of ordinary shares require it to do so, or ASIC requires it to prepare audited financial statements.

All other proprietary companies (eg, large proprietary companies) are required to have their accounts audited unless they obtain audit relief from ASIC. The auditor must be registered in Australia. If various criteria are satisfied, foreign companies are entitled to apply to ASIC for relief from the requirement to have their accounts audited.

Public company

All public companies are required to have their annual financial statements audited. The auditor must be registered in Australia.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

Shares of a proprietary company have no par value. The "issue price" is determined by directors at the time of issue, and whether a share is fully or partly paid is determined by reference to the amount of the issue price that has been paid to the company.

Public company

Shares of a public company have no par value. The "issue price" is determined by directors at the time of issue, and whether a share is fully or partly paid is determined by reference to the amount of the issue price that has been paid to the company.

INCREASING OF CAPITALIZATION IF NEEDED

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

There is no concept of authorized or maximum capital. Increased capitalization may occur at any time and must be authorized by ordinary resolution of directors.

Public company

There is no concept of authorized or maximum capital. Increased capitalization may occur at any time and must be authorized by ordinary resolution of directors.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Branch

Repatriation of funds may generally be undertaken at any time. There is no withholding tax payable on the remittance of branch profits to the foreign holding company. This is subject to legislative restrictions for certain industries, such as insurance.

Proprietary company

Funds may be repatriated by dividends or return of capital. This is subject to legislative restrictions for certain industries, such as insurance.

Public company

Funds may be repatriated by dividends or return of capital. This is subject to legislative restrictions for certain industries, such as insurance.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

A signed share transfer form is required to transfer shares (note: duty may apply in certain circumstances).

The constitutions of some proprietary companies contain pre-emptive rights which require that a transferor of shares offers those shares to other shareholders before those shares may be offered to third parties. Frequently, those constitutions will also give the directors the right to refuse to register a share transfer, without them

necessarily being required to give a reason for a refusal to register (although it is common for this power to contain an exception which prevents the directors from refusing to register a transfer of a share which occurs in connection with the enforcement of a security interest over a share).

Public company

Pre-emptive rights provisions are far less common in public company constitutions and cannot be contained in the constitution of an ASX-listed company.

Shareholders' agreements may also provide restrictions on the transfer of shares, with such restrictions typically expressed to take precedence over restrictions found in the company's constitution.

OBTAINING A NAME AND NAMING REQUIREMENTS

Branch

A foreign company must determine that the business name it wishes to use in Australia is available and must reserve that name with ASIC. Once registered, the foreign company must display its name in a conspicuous position and in legible characters outside every office and place of business in Australia that is open and accessible to the public. Some words and phrases cannot be used in a company name without the approval of a government minister.

Proprietary company

A new company must have a name that is different from the name of a company that is already registered. A proprietary company limited by shares must have the words "Proprietary Limited", "Pty Limited" or "Pty Ltd" as part of its name. A company must display its name prominently at every place at which the company carries on business and that is open to the public. Some words and phrases cannot be used in a company name without the approval of a government minister.

Public company

A new company must have a name that is different from the name of a company that is already registered.

A public company must have the words "Limited" or "Ltd" as part of its name. A company must display its name prominently at every place at which the company carries on business and that is open to the public. Some words and phrases cannot be used in a company name without the approval of a government minister.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Branch

Financial institutions; professionals working within the financial sector, bullion and gambling sectors; and other regulated entities (ie, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers may have their own internal KYC requirements.

Proprietary company

Financial institutions; professionals working within the financial sector, bullion and gambling sectors; and other regulated entities (ie, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers may have their own internal KYC requirements.

Public company

Financial institutions; professionals working within the financial sector, bullion and gambling sectors; and other regulated entities (ie, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers may have their own internal KYC requirements.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Branch

Not applicable – this is subject to the requirements of the foreign company's place of incorporation.

Proprietary company

Any changes to a company's constitution must be made by a special resolution (ie, passed by shareholders holding at least 75 percent of the voting shares).

Public company

Any changes to a company's constitution must be made by a special resolution (ie, passed by shareholders holding at least 75 percent of the voting shares). For a public company, a copy of the resolution must be lodged with ASIC within 14 days after the special resolution is passed.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Branch

Apart from the usual tax registrations applicable to all trading companies, namely:

- An Australian Business Number (ABN)
- An Australian Tax File Number (TFN) and
- GST registration,

There are no general registrations, licenses or permits that are required to conduct business in Australia.

Proprietary company

Apart from the usual tax registrations applicable to all trading companies, namely:

- An ABN
- A TFN and

- GST registration,

There are no general registrations, licenses or permits that are required to establish a company or conduct business in Australia.

Public company

Apart from the usual tax registrations applicable to all trading companies, namely:

- An ABN
- A TFN and
- GST registration,

There are no general registrations, licenses or permits that are required to establish a company or conduct business in Australia.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Branch

Not applicable for this jurisdiction.

Proprietary company

A shelf company may be purchased from third-party suppliers but, given the speed and ease of incorporation, this is rarely used. It is common to incorporate a company from scratch because, once a person has the relevant member, director and registered office consents, the process may be completed on the same day.

Public company

A shelf company may be purchased from third-party suppliers but, given the speed and ease of incorporation, this is rarely used.

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