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AUSTRALIA

Resident Australian Director requirements and the new Director ID

When deciding how to enter the Australian market and establishing a business there are several important considerations to take into account.

Depending on your business' circumstances, your options include either outsourcing your employment and administrative duties, registering your foreign entity as a branch, or establishing a subsidiary company in Australia.

Should you choose a subsidiary, it's important to know that by Australian law, foreign companies establishing a local legal entity (subsidiary) in Australia must appoint at least one local resident Director and one local resident Public Officer. One person can fulfill both roles.

The director residency rule can easily put a stop to expansion plans, which is where outsourcing your local directorship to a 3rd party partner comes into play.

Due to Australian regulations, a company director is legally responsible for significant aspects of the business regardless of whether he or she is appointed in a nominee capacity, or as an actual managing director.

Appointing a Resident Director can be a complex matter, with so many obligations, questions, regulations and rules of which to be aware.

Our director service has been developed for overseas investors or company founders who may not have suitable people to fulfil this role, or they do not want to fulfil the role themselves. Where a non-resident client intends to set up and run a company in Australia, they may lack the resources in Australia to provide the control and management required.

Directors are important gatekeepers in the financial system. They are the intermediary to communicate meaningful and useful information through financial reports from an organisation to its stakeholders.

Each director must have a duty of skill, competence and diligence to understand the financial report to be disclosed to the public. Each director must:

- Read, understand and focus on the content of the financial report
- Apply their own mind to, and carry out a careful review of, the financial report
- Determine that the information contained is consistent with their knowledge of the company's financial position and affairs
- Ensure that material matters known to them – or that should be known to them – are not omitted.

DIRECTOR IDENTIFICATION NUMBER

As part of the Australian government's Modernising Business Registers Program, from 1 November 2021, all directors will need to apply for a Director ID (formerly referred to as Director Identification Numbers or DINs). You will be issued with one Director ID that will link across all director positions and you will hold this number for life.

Any person –

1. who became a director prior to 31 October 2021 must apply for their Director ID by 30 November 2022
2. becoming a director after 31 October 2021 must apply within 28 days of their appointment as a director.

From 5 April 2022, all directors must have their Director ID prior to their appointment.

Foreign resident directors will need to set up a Basic MyGovID identity first and then verify their identity by submitting a paper application with certified copies of one primary and one secondary identity document.

This added layer of compliance has seen a large number of enquires in regards to using an Australian Resident Director Service.

Whilst expanding your business to Australia can seem daunting and complicated, it doesn't have to be. Engaging a specialist to act as Director during the company setup process is typically the most efficient, safest, and ultimately the most cost effective way forward for most businesses looking to meet minimum requirements set out by the government.

Given the responsibilities and fiduciary risks of being a company director in Australia, we are experienced in meeting corporate governance and other business registration requirements. We are able to provide a Resident Director Service to meet your clients needs - so please get in touch to discuss.

Compiled by Sam Harrison on 16 December 2021



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MALAYSIA

Malaysia's National Budget for 2022

Budget 2022 announced by the Minister of Finance, Tengku Datuk Seri Zafrul Aziz on 29 October 2021 reflects an inclusive “Malaysian Families” approach which is in line with the policies and strategies outlined in the 12th Malaysia Plan. It has a total allocation of RM332.10 billion, the largest ever for the country and it surpasses Budget 2021’s allocation of RM322.54 billion. Budget 2022 is formulated based on 3 key focuses on protecting, restoring the lives and livelihoods for the people, rebuilding resilience of the economy, and catalysing socio-economic reforms.

Whilst there are no major new taxes being introduced, a Prosperity Tax was announced, where a one-off tax for Year of Assessment (YA) 2022 is to be imposed on non-SME companies. Those companies with chargeable income in excess of RM100 million will be taxed at a tax rate of 33% on that excess.

OTHER NOTABLE TAX CHANGES INCLUDE;

- The removal of existing income tax exemption on income derived from foreign sources remitted back to Malaysia from 1 January 2022.
- Special Voluntary Disclosure Programme by the Royal Malaysian Customs Department.
- The Budget also announced a welcome extension of the period to carry forward of business losses from seven years to ten years.
- Additional reinvestment allowance is extended for another two years until YA 2024; and
- Real Property Gains Tax (RPGT) rate will be reduced to 0% from disposal of real property or real property company shares by “individual citizens, permanent residents and other than company” in the 6th year onwards. This will take effect from 1 January 2022.

There are also “announcements” of enhancements to tax reliefs for individuals and tax deductions and incentives for businesses, employment, women’s development, cost of living, rural development and others that will help sustain and spur economic activities, rebuild economic resilience, and the reform agenda against the backdrop of the prolonged COVID-19 pandemic.

In order to encourage strategic investments in certain sectors, the Government also provides an allocation for a matching grant. As for Malaysian citizens, the Government plans to introduce “Financial Aid for the Malaysian Families” worth RM 8.2 billion which will benefit 9.6 million recipients.

With such ambitious plans being introduced, it raises the challenge for the Government to balance its effort in rebuilding Malaysia’s fiscal resilience while maintaining its social responsibilities, in line with the “Malaysian Families” concept introduced by the Prime Minister. Overall, Budget 2022 places greater emphasis to revive the economy and provides assistance to those affected by the pandemic, together with measures to boost tax collection

Compiled by Foong Kok Keong on 9 November 2021

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