

Foreign Jurisdiction Filing Requirements for a US company to do business in New Zealand

Registering an Overseas Company in New Zealand

13 September, 2006

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Principal Legislation

- New Zealand Companies Act 1993

Definition of an Overseas Company!

- *SECTION 2 (1)* An "overseas company" is defined as **"a body corporate that is incorporated outside New Zealand"**

Definition of carrying on business!

- *SECTION 332 (a)* An overseas company is carrying on business in New Zealand if its activities include:
 - Establishing or using a share transfer office or share registration office in New Zealand; or
 - Administering, managing or dealing with property in New Zealand as an agent, personal representative or trustee.

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Some possible exclusions to carrying on business!

- *SECTION 332 (B)* An overseas company does not carry on business in NZ merely because in NZ it -
 - Party to legal proceedings
 - Holds meetings of its directors or shareholders
 - Maintains a bank account
 - Effects a sale of property
 - Conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time
 - Invests its funds or holds property.

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When to register an Overseas Company?

- *SECTION 334 (1)* Any overseas company that is **carrying on business in New Zealand must register within ten working days** of commencing to carry on business

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Rational for having an Overseas Register?

- Specific reasons;
 - Convenience for NZ creditors, namely
 - To provide the ability to serve demands on identified people in NZ
 - To provide creditors the ability to sue in NZ
 - Overseas company assets located within NZ can be liquidated for the benefit of creditors

Before operating in NZ.....

- Highly recommend the appointment of local professionals (accountants and lawyers)

How can an Overseas Company operate in NZ?

- An overseas company can operate in New Zealand in one of three ways:
 - Incorporating a wholly owned subsidiary on the NZ Register or
 - Transferring incorporation from country of origin and registering on the NZ Register or
 - **Establishing a branch and registering on the Overseas Register**

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Registration Procedure

Step One – SECTION 333 (1) Name Reservation

- All company names must be reserved before registration. To reserve a name, you may either:
 - Lodge an online application at www.companies.govt.nz fee NZ\$10 or
 - Complete and mail an application on the prescribed form ([Form 4](#)) fee NZ\$25

NOTE: *Must be exact name as used in country of origin and may not necessarily end with word “Limited”*

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Registration Procedure

Step two – Part XVIII *SECTION* 336 Application to Register

- [Form 16](#) filed within 10 days of commencement of business in NZ
- Form 16 requires the following information to be given:
 - Full name of the overseas company.
 - Full names and residential addresses of the directors.
 - Full address of its principal place of business in NZ
 - Full name and address of one or more persons resident or incorporated in New Zealand who are authorised to accept service of documents for the company.
 - The application must be signed

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Registration Procedure

- Form 16 must be accompanied by:
 - Evidence of the company's incorporation overseas and a copy of its constitutional document.
 - The notice of reservation of name.
 - A fee of NZ\$100

NOTE: Documents not in English must have an English translation and be certified (Regulation 9 of the Companies Act 1993)

On-going filing requirements

- [Form 15](#) – Notice of Change of Name of Overseas Company. *Note that the name must be reserved first.*
- [Form 17](#) – Notice of Company changes - Alteration to Constitution of Overseas Company, Change in Directors or Change in Persons Authorised to Accept Service
- [Form 18](#) – Annual Return of Overseas Company – filing fee NZ\$30
- [Form 19](#) – Notice by Overseas Company of Intention to Cease to Carry on Business

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On-going filing requirements

- Financial Reporting Act 1993
 - Each year a copy of the financial statements
 - Each year a copy of the auditor's report
 - Prescribed filing fee of NZ\$100

Other things of note

- Standard late filing fees apply to overseas companies
- We do not record the number of shares, or the shareholders of a company on the Overseas Register. The Act does not require us to hold this information
- On-line certificates of incorporation not provided for Overseas Companies
- Liquidation of Overseas Company...notice of not regulated

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Are there are any other laws to consider?

Overseas companies that wish to operate in New Zealand should consider the effect on their activities of other New Zealand legislation, including the following:

- Commerce Act 1986
- Fair Trading Act 1986
- Fisheries Act 1996 (restricts fish quota's)
- Income Tax Act 1994
- Land Transfer Act 1952
- **Overseas Investment Act 1973** (restrictions on \$ and land)
- Securities Act 1978

- **IMPORTANT NOTE:** This is not a complete list



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WELCOME TO THE NEW ZEALAND COMPANIES OFFICE

This New Zealand government site allows you to form and maintain companies, search the register and file your annual return.

A summary of the key online services are listed below. Please select the service you require from the left hand menu.

Search the Register for information on:

- Companies, Incorporated Societies and Charitable Trusts (includes document images and PPSR financing statements)
- Directors, Shareholders and Company Addresses
- Banned Directors and Managers

Form a Company and Maintain Company Details allows you to:

- Reserve a company name and then incorporate the company
- File company documents (including annual returns)
- Update director, shareholder and company address details

Tools to help you:

- Obtain and change company keys
- Keep up to date with our Business Update newsletter
- General information and guidance
- Forms and fees

Tell us:

- [Are you happy with our service?](#)
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- Maintain Company Details
- Annual Return
- Contact Us
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- Services and Fees
- Societies Website

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Document Title

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- 17 Mar 2005
- 17 Nov 2005
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RETRIEVE DOCUMENTS

	Document Title	Released
<input type="checkbox"/>	15 Notice Change of Name 89Kb	23 Feb 2006
<input type="checkbox"/>	16 Appln Registration of Overseas Company 129Kb	31 Jan 2005
<input type="checkbox"/>	17 Notice Overseas Company's Changes 140Kb	08 Dec 2005
<input type="checkbox"/>	18 Annual Return (Overseas Company) 101Kb	08 Sep 2005
<input type="checkbox"/>	19 Notice Intention to Cease Business 92Kb	31 Jan 2005
<input type="checkbox"/>	20 Appln Overseas Company Register as Company 91Kb	31 Jan 2005
<input type="checkbox"/>	21 Appln Removal from NZ Register 104Kb	31 Jan 2005



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- 2. Companies Register

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- 3a - Receivership and Liquidation
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- 5 My Tools > Company Keys

Document Title

- [Fee Schedule - Companies Office](#)
- [Fee Schedule - MED Online Services](#)
- [Helpful Links](#)

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- 08 Aug 2005
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<input type="checkbox"/>	Company Names Fact Sheet	31 Oct 2005
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<input type="checkbox"/>	Form a Company Fact Sheet	05 Dec 2005
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<input type="checkbox"/>	*New* FAQs Applying for an IRD Number	26 Jul 2005
<input type="checkbox"/>	*New* Starting Up In Business? pdf 46Kb	25 Jul 2005
<input type="checkbox"/>	Overseas Companies Fact Sheet	19 May 2005



Fact Sheet | Overseas Companies

- [Introduction](#)
- [What is an Overseas Company?](#)
- [Which Overseas Companies must Register?](#)
- [What is meant by "Carrying on Business"?](#)
- [How do I register an overseas company?](#)
- [Where do I register these documents?](#)
- [Are there any other laws I should consider?](#)
- [Related Resources](#)
- [Further Information](#)

Introduction

The information contained in this document is for guidance only. We recommend you seek professional advice on all aspects of setting up a company in New Zealand.

What is an Overseas Company?

An "overseas company" is defined in the Companies Act 1993 as "a body corporate that is incorporated outside New Zealand" (section 2(1)). An overseas company can operate in New Zealand in one of three ways:

- By establishing a wholly owned New Zealand subsidiary company and registering on the New Zealand register under Part II of the Act (sections 11 to 15).
- By establishing a branch operation and registering as an overseas company on the overseas register under Part XVIII of the Act (sections 332 to 337).
- By transferring its incorporation from the country in which it is registered to New Zealand under Part XIX of the Act and becoming a New Zealand company by registering under Part II of the Act (sections 344 to 349 and 11 to 15).

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Which Overseas Companies must Register?

Any overseas company that is carrying on business in New Zealand must register within ten working days of commencing to carry on business (section 334(1)).

Thank you, questions?.....

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