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Information about Companies

The information on this page is brief. If you have further questions you should take advice from a lawyer – you can contact me on 021 450 253 or e-mail me at simon@thepropertylawyer.co.nz.

Topics

- Company's name
- Shareholders
- Shares
  - number of shares
  - issue price of shares
  - shareholders' liability
- Registered Office (and postal address)
- Constitution
- Directors
- Control of the company
- Advantages and disadvantages of a company

Company's name:

The Ministry of Economic Affairs will allow you to use any name which is not the same as, or nearly the same as an existing company's name.

Control of Company:

The director(s) run the Company. The shareholders can not interfere in the day to day management but they can appoint or dismiss the directors.

Directors:

Your Company must have at least one director. The directors attend to the day to day running of the Company. They are appointed (and dismissed) by the shareholders.

Shareholders:

Your Company must have at least one shareholder, and can have as many as you want. The shareholders own the Company in the same proportion as they own the shares. For example if you own 25 shares in a Company which has 100 shares, then you own 25% of the Company.

Shares:

Number of shares: Your Company must have at least one share, and may have as many more as you wish. However, unless you have a particular reason for a particular number, it is convenient to start your Company with 100 shares.

Issue Price of Shares:

When the Company is formed, the shares are issued to the owners (the shareholders). We provide you with the appropriate document. You can issue the shares for any price, but the usual price is $1.00 each.

Shareholders' liability:

One of the main advantages of forming a company is that the shareholders have no liability for the company's debts. But if a shareholder has not paid the issue price for his shares, and the Company goes into liquidation, a Creditor could ask him to pay for his shares at that stage. If you start your Company with 100 shares, issued for $1.00 each, then the maximum amount that the shareholders could be liable for would be $100.00.

Registered Office and Postal Address:

Every Company must have a registered office in New Zealand. This must be a street address. It could be your own home, or your work, or your accountant's office. If the Registered Office is an accountant's or lawyer's office, please add that information to the order form. Is your registered office also to be your postal address? If not, please also add your postal address to the address box on the order form.

Constitution:

A constitution is a set of rules which (with the Companies Act) regulates the Company. We use a standard constitution with all of our Companies, and here is a list of some of its main points:

Directors

1. Directors are appointed or removed by special resolution of the shareholders.

2. A quorum at a Directors' meeting is a majority of the Directors.

3. The minimum number of Directors is one, no maximum number is set.

4. Directors need not hold shares in the Company.

5. A Director who has a special interest in a transaction of the Company may nevertheless vote on matters relating to the transactions.

6. The Board may indemnify and/or insure Directors to the extent allowed by the Act.

Shareholders

1. A quorum is present at a shareholders' meeting if shareholders or their proxies are present (or have cast postal votes) who are between them able to exercise a majority of the votes which could be cast on the business to be transacted.

2. Special Resolutions must be passed by a 75% majority.

Shares

1. Ordinary Shares carry the right to:

(i) one vote per share

(ii) equal shares in dividends

(iii) equal share in distribution of assets

2. With the approval of the shareholders by special resolution, the Board may issue more shares.

3. The Board may issue different classes of shares.

4. The Company may acquire its own shares.

5. New issues must be offered to existing shareholders pro rata.

6. The Company may give financial assistance to people to acquire shares in the Company.

7. Pre-emption Shareholders' rights to sell shares are restricted. Shareholders must first offer their shares for sale to remaining shareholders.

8. The Board may (with the consent of the shareholders involved) issue bonus shares in lieu of dividends.

Management

1. No restrictions are placed on the Company's capacity, or on its rights powers and privileges.

2. The Board of Directors manages the Company. (The drafters of the Constitution suggest that if powers of management are to be given to any shareholders then those shareholders should be made directors).

3. Shareholders may pass resolutions relating to the management of the Company but such resolutions are not binding on the Board.

4. There is no provision for a Governing Director, because some provisions in the new Act give shareholders rights which are inconsistent with the role of Governing Director. If one person is to have the maximum possible control of the Company, that person could be made the sole director and sole voting shareholder.

5. The Board may indemnify and/or insure individual Directors to the extent allowed by the Act.

6. The Company may employ a Secretary if it wishes.

7. The Company will not have a common seal.

We can make small changes to these rules. For example we could change the way that directors are appointed or we could provide that some shares had voting rights and some did not.

If you want changes made to the Constitution, please contact me by e-mail simon@thepropertylawyer.co.nz

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