

## **Offshore Privacy Ltd. New Zealand Limited Companies**

We can help you form a New Zealand Limited Company quickly and easily. New Zealand has one of the fastest company formation processes in the world, and most of it can be completed online. This makes the company option attractive to anyone in business.

New Zealand Limited Company and North Cyprus Corporate Bank Account: **€599 plus courier**

### **Certificate of Incorporation**

- An initial resolution of members relating to auditor
- Constitution
- Opening Minutes
- Blank pages of minutes (directors' and shareholders')
- Register of Directors
- Register of Directors' Certificates and Directors' Certificate blank
- Registers related to Directors' Interests
  - general interests
  - specific interests
  - use of information
  - share dealings
  - shares acquisitions/disposition
  - payments and benefits
  - indemnities and insurances
- Share Register
  - register of members/shareholders
  - register of transactions
  - share transfer journal
  - individual shareholders' records
  - share certificates (one per each shareholder)
- Also
  - register of charges
  - location of registered office
  - address for service register

**Optional Apostilled set of corporation documents is €250**

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## **What is a Company?**

Persons engaged in business have a choice as to how they will establish their business. Options include carrying on business as a sole trader, in partnership or as a company. A company is essentially a mechanism to create a separate legal entity to carry on business.

Every company has certain basic elements:

- a name which has been reserved by the Registrar of Companies
- at least one share, one shareholder and one director
- addresses for the registered office and for service (the Registrar also requests an address for communications)

A company may have limited (most common) or unlimited liability (see later for more information). A company comes into existence after it is incorporated under the Companies Act. Once incorporated it is recognized in law as an independent legal entity (a Body Corporate). This means it is treated as being a separate person from its directors and shareholders. It can therefore do many of the same things as a natural person - e.g. hold property in its own name, enter contracts, sue and be sued, etc.

## **Company Names**

The Registrar of Companies is responsible for the approval and reservation of company names.

A New Zealand company or an overseas company intending to carry on business in New Zealand cannot be registered under a name unless that name has been approved and reserved by the Registrar (sections 20 & 333(1) Companies Act).

A company may choose to change its name. It must first apply to the Registrar of Companies to reserve the name it has chosen. After the company has been notified that the new name has been reserved, the director(s) must pass a resolution to change the name and then notify the Registrar of the change.

Registration of a company name only provides limited name protection - that is, it will prevent another company being incorporated under an identical or almost identical name.

## **Directors & Shareholders**

It is very important to recognize the distinction between shareholders and directors.

Shareholders are investors in the company. They pay money into the company in return for shares. The amount shareholders pay for shares is determined by agreement with the company. They do not participate in the management of the company, other than by voting on the appointment and removal of directors.

Directors are responsible for managing the company day-to-day business. In doing so, directors owe duties to the company, to its shareholders, and to others dealing with the company.

Directors must act honestly in what they believe to be the best interests of the company and with such care as may reasonably be expected of them in all the circumstances.

Directors must not carry on the business in a manner likely to create a substantial risk of serious loss to the company creditors (so-called reckless trading).

A person cannot be a director of a company if he/she is:

- under 18 years of age; or
- an undischarged bankrupt; or
- prohibited from directing/promoting/participating in the management of a company under any statutory provisions; or
- subject to a property order made under sections 30 or 31 of the Protection of Personal and Property Rights Act 1988; or
- not qualified pursuant to the constitution of a particular company.

Any changes in the director(s) of a company or information relating to the director(s) must be notified to the Registrar.

New director appointments or resignations must be notified within 20 working days of an appointment being made or a resignation taking effect. The other changes (e.g. new directors address) must be notified within 20 working days of the company first becoming aware of the change or event. It is an offense under the Companies Act if these requirements are not complied with (Section 159).

A new director must consent to act as a director and certify that he or she is not disqualified from being appointed or holding office as a director.

### **Registered Office & Address for Service**

Every company must have a Registered Office and Address for Service in New Zealand.

The registered office and address for service need not be at the company place of business, nor in the same place. However they must be at a physical location not a postal center or document exchange. The address for communications can be a postal address. For online applications the applicant for incorporation must supply an email address. These addresses are first notified to the Registrar on the application for incorporation.

If a company wishes to change its Registered Office or Address for Service the change, and the date upon which it is to take effect, must be notified to the Registrar. The notice must be registered at least 5 working days before the change takes effect.

### **Why Form a Company?**

There are a number of reasons why people choose to incorporate a company rather than one of the other business types.

**Limited Liability** - The primary reason is the protection that limited liability affords to shareholders. All companies are limited liability companies unless the particular company constitution provides otherwise (Note: this is very rare). Although it is common to speak of a limited liability company, it is in fact the liability of the shareholders that is limited. The company is liable in full for all obligations that it incurs.

This concept of limited liability becomes important if the company is unable to pay its debts, and a liquidator is appointed. Shareholders of a limited liability company are not liable for the business debts of the company (subject to any personal guarantees given) - they are only liable (to the liquidator) for any unpaid money owing on their shares. If they have fully paid for their shares prior to the company being placed in liquidation, they will have no further liability to the company's creditors.

By contrast a sole trader, or a person trading in partnership, will be personally liable for business debts that cannot be met by business funds.

Some other reasons for incorporating a company include:

- Continuity of existence - a company will continue until it is removed from the register. It can often survive many changes in ownership or management. With a partnership, the retirement or death of a partner usually brings that partnership to an end.
- Transferability of shares - shareholders may sell or otherwise dispose of their shares at any time (subject to any restriction imposed in the company constitution). A partnership interest, on the other hand, is generally not able to be assigned or transferred.
- Control by shareholders - if the shares held by a shareholder are voting shares, that shareholder may participate in the election and removal of directors. Accordingly, shareholders, with their collective right to elect the directors, have the ultimate control of the company without being concerned in its day-to-day affairs.

### **How Do You Form a Company?**

Make your application for incorporation of a company online. Its quick and easy, not to mention relatively cheap. For these reasons it is the preferred way to incorporate.

### **Books & Registers**

The Companies Act requires every company to keep and maintain certain records:

- Company records [described in section 189]
- Share register [described in section 87]
- Accounting records [described in section 194]

These requirements are described in detail below.

## **Company Records**

### **Section 189 Companies Act**

A company must keep a variety of documents at its Registered Office including the constitution, minutes of shareholders and directors meetings, financial statements and accounting records and the share register.

Notwithstanding the general requirements to keep these records at a company registered office, the records may be kept at any other location in New Zealand provided their location is notified to the Registrar with 10-working days advance notice of the change.

## **Share Register**

### **Sections 87-94 Companies Act**

A company must maintain a share register that records the shares issued by the company and states:

- whether there are any restrictions or limitations on their transfer; and
- where any document that contains the restrictions or limitations may be inspected.

The share register must also record an alphabetical list of the:

- Name(s)
- Last known address, and
- Number of shares held

for each shareholder (Note: includes both current shareholders and those who have been shareholders within the last 10 years).

The register must also show the date of share issues, repurchases or redemptions and share transfers.

An agent (such as a professional share registry) may maintain the share register of any company.

Subject to a company constitution, a share register may be divided into 2 or more registers and kept in different locations. A notice of the location of each register must be delivered to the Registrar within 10 working days after the share register is divided. The Share Register, if undivided, is the company's principal register and must be kept at its Registered Office. If divided, the Share Registers may be kept elsewhere.

## **Accounting Records & Appointment of Auditors**

### **Sections 194 & 196 Companies Act**

Every company must prepare financial statements annually. These must be audited unless all shareholders in the company agree otherwise (Auditor Resolution). If an auditor is to be appointed, the appointment is made at each Annual Meeting. There are some companies that must always appoint an Auditor (ie. those that are required to file financial statements under the Financial Reporting Act 1993).

The board of a company must ensure that the company keeps accounting records. These records must:

- Correctly record and explain the company transactions;
- At any time enable the financial position of the company to be determined with reasonable accuracy;
- Enable the directors to ensure that the company financial statements comply with the Financial Reporting Act 1993; and
- Enable the company financial statements to be readily and properly audited.

## **Security Interests**

Historically the Companies Act required companies to maintain a register of charges. This provision was removed with the introduction of the Personal Property Securities Act 1999 - although it would be considered good practice for companies to maintain details of their security interests.

Security interests over personal property (for example, secured loans, leases or hire purchases) can be registered and searched on the Personal Property Securities Register (PPSR) [www.ppsr.govt.nz](http://www.ppsr.govt.nz).

A search of the PPSR for any registered security interests in respect of a specific company can also be conducted via the Companies Register at [www.companies.govt.nz](http://www.companies.govt.nz).

## **Annual Meeting**

Every company must hold an annual meeting of shareholders once in each calendar year. Generally the meeting must be no later than 6 months after the company's balance date and no later than 15 months after the previous annual meeting.

A company does not have to hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of incorporating.

## **Annual Return**

All companies are required to file an annual return in a designated month. Complete this online free of charge or file a manual form and pay the \$30 filing fee. An annual return reminder is sent to companies in the month before their return is due to be filed.

A company is not required to file an annual return in the calendar year of its incorporation. For more information about Annual Returns visit the Information Library on our website.

## **Adopt, Alter or Revoke a Constitution**

The shareholders of a company without a constitution may adopt one by special resolution. Shareholders may also alter or revoke a constitution by special resolution. The board of a company must ensure that notice of an adoption, alteration or revocation is filed with the Registrar within 10 working days of the event taking place. There is no fee to adopt, alter or revoke a constitution.

## **Issue of Shares**

After incorporation a company must issue to any person named in the application as a shareholder, the number of shares that the application says the shareholder will receive. After the first issue of shares, the board of a company may issue shares at any time, to any person, and in any quantity it sees fit. This power is subject to the provisions of the Act and any provisions in a company's constitution that may modify its right to issue shares. The Registrar must receive notice of the share issue on the a paper form and filing it with the Companies Office as appropriate within 10 working days of the issue.

## **Distributions to Shareholders**

The board of a company may authorize a distribution by the company at any time, and of any amount, and to any shareholders it sees fit. But before doing so it must:

- be satisfied, on reasonable grounds, that the company will be able to satisfy the solvency test immediately after the distribution; and
- ensure that it does not breach section 53 of the Act, or any provision in its constitution relating to distributions.

Directors who vote in favor of a distribution must sign a certificate stating that the company can satisfy the solvency test and give the grounds for that opinion. A company satisfies the solvency test if:

- it is able to pay its debts as they become due in the normal course of business; and
- the value of the company's assets is greater than the value of its liabilities including contingent liabilities.

**Source: New Zealand Companies Office - Information Library**