

MURDOCH PRICE

Barristers & Solicitors

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FORMING A COMPANY

What is a Company?

A legal entity whereby the shareholders are not liable for the company's debts. The liability of the company is limited to the company's assets.

The directors can be personally liable in some circumstances. This may relate to reckless trading or trading in the knowledge that the company will not be able to meet its future debts when due.

The shareholders own the company and where appropriate provide the funds for the company.

The shareholders appoint (and remove) the directors.

The directors operate the company and conduct its activities on a day to day basis.

The directors can also be shareholders.

It is possible to have a company with only one shareholder who is also the sole director.

Rules governing relationships between directors and shareholders and the company are set out in the Companies Act and the company's constitution (if it has one).

Why have a Company?

Limited Liability – The shareholders are not liable for the company's debts. However suppliers, finance organisations and landlords will often require personal guarantees of the directors.

- See also *Family Trusts for protection of personal assets* -

Business Efficacy and Administration – Being a separate legal entity eases dealings with other businesses and customers and provides a convenient entity for borrowing monies for the business. The company structure has a well established accounting format and makes it easier to separate and identify money and assets the shareholders contribute to the company. It enables separation of the operators of the business (directors) and the owners/funders (shareholders).

Changes in Owners/Operators – Additional shareholders/directors or a change in shareholders/directors are accomplished quite easily without any change to the company's operations, letterhead, and dealings with customers.

Taxation

A company's net profit is taxed at 28%. Directors fees and/or shareholders salaries can be paid by the company which reduces or eliminates the company's net profits.

If the company makes a loss then this loss can be off-set against future years profits for the company. Losses can be passed down to the company's shareholders and off-set against their own personal income for tax purposes if the company elects to be a Look Through Company (LTC). Profits are also passed down to the shareholder in an LTC.

Generally your accountant will assist you with the calculation and allocation of the company's net profit or loss when completing the company's annual accounts and tax returns.

See also LAQC post 1/4/11

How Do You Form A Company?

Either come and see us or send to us the following details by e-mail, fax or letter.

1. Proposed name of the company.
2. Names, address and occupations of the shareholder(s) and the number (or percentage) of shares for each shareholder. (Note: The opening shares have no nominal value e.g. \$1.00 a share. The value of the opening shares is assessed as the net value of the company divided by the number of shares.)
3. Names, address, occupations and IRD numbers of the director(s) (and e-mail addresses if any).
4. A physical address for the company.
5. A postal address for the company. (It can be the same as the physical address).
6. An e-mail address for the company (which can be one of the directors/shareholders e-mail).
7. Any special requirements or questions.
8. A brief description of what the company will do.

When Can It All Happen?

With your co-operation we can form a company in one day. However we would have to charge a premium for that. 3 or preferably more days is more comfortable.

We can also arrange an IRD number and GST registration for the company if required.

Constitutions and Shareholders Agreements

- You may want to require shareholders to offer their shares to existing shareholders before selling to third parties (e.g. competitors).
- You may want to provide for a dispute resolution procedure instead of relying on expensive court proceedings.
- You may want to provide for a mix of voting and investment shares with or without the right to appoint a director.

For this and other issues of ownership, control and exit procedures you need a Constitution for the company or a shareholders agreement. A shareholders agreement is more flexible and is a private document unlike a Constitution which is a public document open to the world to view on-line (including your competitors).

A Constitution is more suited to a larger company with some investor only shareholders. A shareholders agreement is more appropriate for a smaller company with working shareholders or a mix of working and/or investor shareholders. Contact us to discuss what may be the most significant and important document your company will ever have.