
DOING BUSINESS
IN NEW ZEALAND:
COMPANY BASICS

PARRY FIELD LAWYERS

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We are a New Zealand owned company that has been serving our clients since 1948. Our aim is not only to provide sound legal advice, but to also find solutions which deliver the best practical outcome for those we represent.

Our History

In 2023 we celebrated 75 years in practice and today we have grown to 11 partners, around 100 staff and operate from five locations.

To The Heart Of What Matters

We see our clients in a rounded way and wanted to help them with 'what really matters', for legal services and beyond, where appropriate. With our growing team, we are excited by what the future holds and look forward to continuing to provide exceptional legal services to our valued clients.

Find out more at parryfield.com

Compiled by the Parry Field Lawyers Impact Team

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DOING BUSINESS IN NEW ZEALAND: **COMPANY BASICS**

Limited liability companies are the most common structure used in New Zealand and are governed by the Companies Act 1993 (the Act). The set up and administration required is relatively straightforward and, once completed, forms a separate legal entity to the people involved. This means the company has all the powers of a natural person (subject to the Act and the company's constitution) and the company can enter into contracts, borrow money and/or own property. In ordinary circumstances, shareholders of a company are only liable for the company's liabilities up to the value that they paid/contributed for their shares.

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Key Requirements for Registering a Company

Setting up a company has a different meaning to setting up in business as you are creating a separate legal entity. The process will require certain details to be provided to the New Zealand Companies Office. At its core, a company must have a few essential things:

- 1. A company name:** under the Act you need to have reserved your company name before your company can be registered.
- 2. At least one share and one shareholder:** beyond these minimum requirements there are no limits on the size of the company's share capital or number of shareholders. Significantly, there are no residency requirements for shareholders.
- 3. At least one director who is a New Zealand resident:** alternatively, there may be one Australian resident director who is also the director of an Australian company.
- 4. Contact addresses:** this requires a physical registered office address and an address for service in New Zealand.

Constitution and Shareholders' Agreements

Although not legal requirements, many companies choose to have a constitution and/or shareholders' agreement. In fact these documents are recommended to provide clarity and avoid future complications, particularly where the constitution is tailored to a specific company.

Constitution

A company may choose to create a constitution which sets out how the company will be run. In essence the constitution is a document that sets out the ways in which the company will deviate from the standard rules under the Act. The Act provides a set of default rules which include matters such as the rights, duties, powers and obligations of a company, the directors and the shareholders. Many of these can be altered or modified in the constitution.

There are provisions of the Act that cannot be altered in the constitution. These include the basic requirements noted above (for example that a company must have a name, one shareholder and one director). Any attempt to modify these requirements in the constitution will be of no effect.

A constitution can be adopted at the time the company is first incorporated or at any time after. Importantly the constitution must be registered with the Companies Office and will be publicly available on the Companies Office website.

It is important to note that while not a legal requirement to register a company, a constitution is a requirement for a company to register as a charity. Additionally, a constitution is necessary to purchase insurance for or to indemnify directors (see [Section 162](#) of the Act).

Shareholders' agreement

A shareholders' agreement is another optional document that sets out specific details on the running of the company. Unlike a constitution, a shareholders' agreement is a private contract between the shareholders and usually the company. For this reason, it is not made publicly available from Companies Office.

The purpose of a shareholder's agreement is to set out details of how the company will be managed as well as shareholder duties and responsibilities. This may help prevent deadlock (where shareholders or parties have an irreconcilable conflict leading to inability to make decisions). Preventing deadlocks is of particular benefit in 50/50 companies where neither shareholder has a majority interest. Furthermore, a shareholder agreement can help a company avoid lengthy and costly disputes between shareholders if potential risks are discussed and agreed beforehand in the agreement.

Registration Requirements: How to Set Up a Company

Reserve the company name

This is the first step in creating your company. Under the Act, you need to have reserved your company name before the Registrar can register your company. The Act states that the Registrar must not reserve a name if it:

- Would breach New Zealand law;
- Is identical or almost identical to the name of another company; or
- Is offensive in the opinion of the registrar.

Visit onecheck.business.govt.nz to search whether the company name, domain and trademarks are available. Once you are certain that the name will be appropriate, head to the Companies Register to apply to reserve the name. Once your application has been approved, they will send you a confirmation email. From then on, you will have 20 working days to incorporate your company.

Incorporation

Before applying for incorporation there are few steps you should take:

- Collect company contact details: address of register and contact email.
- Have the details of all your directors: the information required includes each directors full legal name, date and place of birth, residential address and date of appointment.
- Have the details of your shares and shareholders: personal details of each shareholder and how many shares they have.
- Declare the Ultimate Holding Company (UHC): A UHC is a body corporate that has control of another company (usually by having major shareholding). If you are controlled by a UHC, you will need to disclose this in your application.

When you are ready to apply for incorporation, follow the link given to you in your confirmation email from reserving your name, or log on to the Companies Register. For more information and steps, go to the [Companies Register website](#).

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Ongoing Compliance

Annual returns

Every year companies must file an annual return on the Companies Register to confirm that the company is still operating and that details recorded are correct. An annual return does not include any financial information.

Taxation

We recommend companies inquire with their accountant about tax and accountancy.

Director's duties

Under the Act and the common law of New Zealand, there are certain duties imposed on company directors. It is important to understand these duties as any breach may result in liability.

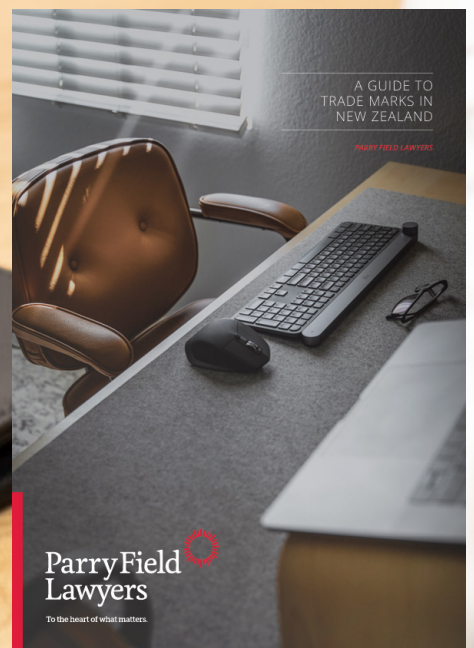
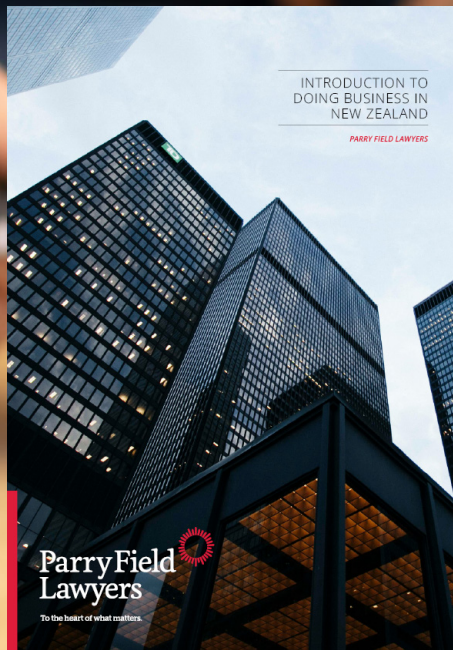
These duties include (but are not limited to) the below:

- (a) Duty of directors to act in good faith and in best interests of company (s 131);
- (b) Exercise of powers in relation to employees (s 132);
- (c) Powers to be exercised for proper purpose (s 133);
- (d) Directors to comply with Act and constitution (s 134);
- (e) Duties related to reckless trading (s 135);
- (f) Duty in relation to obligations incurred (s 136);
- (g) Director's duty of care (s 137); and
- (h) Use of information and advice (s 138).

For further information on director's duties and other relevant topics see our [Startups Legal Toolkit](#).



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