

INCORPORATING A COMPANY

Introduction

The Companies Office has introduced electronic incorporation and we can now incorporate a company through on-line access to the Companies Office.

On-line electronic incorporation is a world first. The advantage is that all documents lodged for registration electronically can be searched through the same medium. This has advantages for any company with overseas contacts who will be able to obtain an instantaneous and accurate copy of the company's structure including its constitution.

Why incorporate a company?

1. A company is a separate legal entity. It has its own tax and GST numbers, which are unique to the company.
2. The company can enter into contracts in its own right. The directors and shareholders are generally not personally liable for the company's debts unless they personally guarantee the company debts.

Limitation of liability

A shareholder is only liable for the amount not paid on the shares the shareholder owns in the capital of a company. The directors of a company are not personally liable for company debts unless the directors trade recklessly, fraudulently or breach some statutory requirements leading to personal liability.

Incorporation gives shareholders, and more particularly directors, protection from third parties in respect of any claims for negligence.

A company is not affected by the death, insolvency or incapacity of the individual directors or shareholders. A company can therefore "*live forever*".

Name protection

There is no system for registration of a business name in New Zealand. By incorporating a company you can stop someone else incorporating a company with the same or a very similar name.

Financing

The structure of a company enables security to be given over future property and changing stock in trade. A company is favoured by financiers who generally require a debenture (mortgage) over the company assets.

Separate tax and accounting records

A company must keep its own accounting and taxation records. All proper deductions arising from carrying on the business activity are deductible as overheads. The company must file a tax return.

Constitution

We have constitutions (rules) available for sole trader companies, closely controlled (i.e. family type companies) a partnership type structure where there are two or more shareholders requiring rights that are fixed in the constitution relating to their shareholding and a constitution for a company incorporated electronically.

Disclaimer

Many of the principals discussed above are generalisations and require analysis of particular facts before amounting to legal advice.

A draft copy of a suggested constitution with explanatory notes is available for your perusal. Note a constitution can be individually tailored to meet your particular requirements.

It is also possible to incorporate a company without a formal constitution, in which case the provisions of the Companies Act 1993 govern the conduct of the shareholders and directors. The major disadvantages of having no constitution is that the company's shares may be transferred without restriction and that may create a problem where shares were to be withheld from outsiders.

Please feel free to discuss your individual requirements with us.

Also a constitution may provide for different classes of shares so that it is possible to provide for non-voting shares or preferential shares i.e. carrying the right to a defined dividend.

CHECKLIST FOR INCORPORATION OF A COMPANY

Attached is a checklist, which will enable us to incorporate a company electronically. The incorporation process can now take a matter of **hours** not days.

- Company name (please provide one or two alternatives)
- Physical address of registered office
- Physical address for service
- Postal address to which communications from the Registrar of Companies will be sent.
- Directors of company:

Surname and given names	Residential address
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- Shareholders of company:

Surname and given names	Residential address	Number of shares	Class of Shares
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Constitution

Please specify any particular requirements for the company constitution.