

*ABACONDA MANAGEMENT GROUP*

---

**REQUIREMENTS OF NEW ZEALAND COMPANY (LIMITED  
LIABILITY COMPANY)**

**COMPANIES ACT 1993 SUMMARY WITH REFERENCES**



**2011**

## Table of Contents

Shares of New Zealand Company.....	2
Shareholders of New Zealand Company .....	3
Directors of New Zealand Company.....	4
Administration of New Zealand Company .....	5
Registered Office of New Zealand Company.....	5
Records of New Zealand Company.....	6
Address for service of New Zealand Company.....	6
Accounting records and audit of New Zealand Company .....	6
Amalgamations of New Zealand Companies.....	8
Removal of New Zealand Company from the New Zealand register .....	8
Transfer of registration & redomiciliation.....	9

*Abaconda Management Group Ltd*

*556 Cameron Rd, Office 3, Tauranga South, Tauranga, 3112, New Zealand*

*PO Box 13645, Central, Tauranga, 3141, New Zealand*

*+64 9 88 9 2277*

*info@abaconda.info*

[www.abaconda.info](http://www.abaconda.info)

*Neither this brochure nor our website provides neither tax, nor legal or accounting, investment or any other professional advice. Please do not confuse the information given in our brochures, websites and communications with a professional consultation. This brochure should not be construed as a solicitation or offering of any service by Abaconda Management Group Ltd.*

*© All rights reserved. Abaconda Management Group Ltd.*

## Essential requirements of New Zealand Company

New Zealand Company is a legal entity in its own right, separate from its shareholders and continues in existence until it is removed from the New Zealand register (s.15).

The registered name of a company must end with the word “Limited” or the words “Tāpui” if the liability of the shareholders of the company is limited. (s.21). Company must ensure that its name is clearly stated in every written communication sent by, or on behalf of, the company; and every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company (s.25.1).

Company may but does not have to have a constitution (s.26). If a company does not have a constitution, the company, the board, each director, and each shareholder of the company have the rights, powers, duties, and obligations set out in Companies Act 1993 (s.28). The constitution of a company has no effect to the extent that it contravenes, or is inconsistent with, Companies Act 1993 (s.31).

In order to be incorporated under the Companies Act 1993, a company must have:

- A name which has been reserved by the Registrar of Companies
- At least one share (s.10)
- At least one corporate or individual shareholder (s.10)
- At least one individual director (s.10, s.150, s.151)
- Registered office (s.186)
- Address for service (s.192)

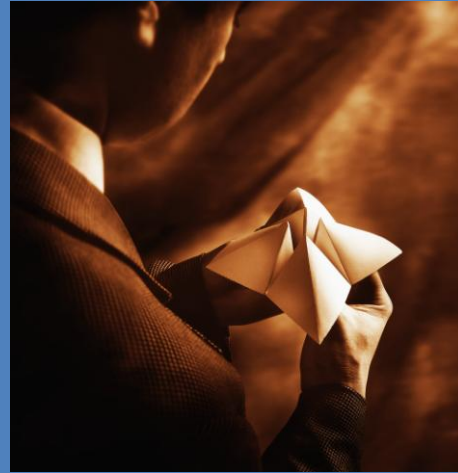
Company must always have a registered office and address for service in New Zealand (s.186, s.192)).

### Shares of New Zealand Company

A share must not have a nominal or par value (s.38)

Subsidiary may not hold shares in holding company (s.82)

Company may acquire its own shares (s.58)



New Zealand Company is a legal entity in its own right, separate from its shareholders and continues in existence until it is removed from the New Zealand register.

Company must not exercise an option to redeem a share unless the board of the company is satisfied on reasonable grounds that the company will, immediately after the share is redeemed, satisfy the solvency test (s.70).

Company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company (s.76)

Company must maintain a share register that records the shares issued by the company (s.78). The principal register must be kept in New Zealand (s.78). It is the duty of each director to take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered. Director who fails to comply, commits an offence and is liable on conviction to the penalty. (s.90)

## Shareholders of New Zealand Company

Except where the constitution of a company provides that the liability of the shareholders of the company is unlimited, a shareholder is not liable for an obligation of the company by reason only of being a shareholder (s.97). A former shareholder who ceased to be a shareholder during the specified period is liable to the company in respect of any amount unpaid on the shares held by that former shareholder or any liability provided for in the constitution of the company for which that former shareholder was liable to the company (s.98).

Power reserved to shareholders may be exercised by an ordinary resolution. An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question (s.105)

The chairperson of a meeting of shareholders of a company must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company (s.109).

The board of a company must call an annual meeting (s.120.) of shareholders to be held in the case of an exempt company, if all the shareholders of the company agree, not later than 10 months after the balance date of the company. For all other companies -not later than 6 months after the balance date of the company and not later than 15 months after the previous annual meeting. Company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.

A shareholder or former shareholder may bring an action against a director for breach of a duty owed to him or her as a shareholder (s.169).

*The board of a company must call an annual meeting of shareholders to be held in the case of an exempt company, not later than 10 months after the balance date of the company. For all other companies not later than 6 months after the balance date of the company and not later than 15 months after the previous annual meeting.*

A shareholder of a company may bring an action against the company for breach of a duty owed by the company to him or her as a shareholder (s.171).

A shareholder may at any time make a written request to a company for information held by the company (s.178).

## Directors of New Zealand Company

The business and affairs of a company must be managed by, or under the direction or supervision of, the board of the company (s.128).

Company must not enter into a major transaction unless the transaction is approved by special resolution; or contingent on approval by special resolution (s.129) Major transaction, in relation to a company, means:

- the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or
- the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or
- transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the company's assets before the transaction

*Director of a company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.*

Director of a company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company. A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company, act in a manner which he or she believes is in the best interests of that company's holding company even though it may not be in the best interests of the company (s131).

Director of a company must not agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors; or cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors (s.135).

A director of a company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information (s.145).

The following persons are disqualified from being appointed or holding office as a director of a company (s.151):

- a person who is under 18 years of age
- a person who is an undischarged bankrupt
- a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company
- a person who is prohibited, under a law of a prescribed country, State, or territory outside New Zealand, being a director of an overseas company, or being a promoter of an overseas company, or being concerned or taking part in the management of an overseas company:
- a person who does not comply with any qualifications for directors contained in the constitution of that company.

*Company must always have a registered office in New Zealand*

A person must not be appointed a director of a company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of a company (S.152).

Notice of change of directors must be delivered to the Registrar within 20 working days (s.159).

## Administration of New Zealand Company

Obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be(s.180): entered into on behalf of the company in writing signed under the name of the company by

- 2 or more directors of the company; or
- if there is only 1 director, by that director whose signature must be witnessed; or
- if the constitution of the company so provides, a director, or other person or class of persons whose signature or signatures must be witnessed; or
- 1 or more attorneys appointed by the company.

## Registered Office of New Zealand Company

Company must always have a registered office in New Zealand (s.186). The registered office of a company at a particular time is the place that is described as its registered office in the New Zealand Register at that time.

The description of the registered office must (s.186):

- state the address of the registered office; and
- if the registered office is at the offices of any firm of chartered accountants, barristers and solicitors, or any other person, state that the registered office of the company is at the offices of that firm or person; and particulars of the location in any building of those offices; or
- if the registered office is not at the offices of any such firm or person but is located in a building occupied by persons other than the company, state particulars of its location in the building.

Company may change the registered office of the company at any time. Notice in the prescribed form of the change must be given to the Registrar for registration. The change in the registered office takes effect

on a date stated in the notice not being a date that is earlier than 5 working days after the notice is registered (s.187).

## Records of New Zealand Company

Company must keep the following documents at its registered office (s.189):

- the constitution of the company
- minutes of all meetings and resolutions of shareholders within the last 7 years
- an interests register
- minutes of all meetings and resolutions of directors and directors' committees within the last 7 years
- certificates given by directors under this Act within the last 7 years
- the full names and addresses of the current directors:
- copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made
- copies of all financial statements and group financial statements required for the last 7 completed accounting periods of the company:
- the accounting records for the current accounting period and for the last 7 completed accounting periods of the company:
- the share register.

The records of a company must be kept in written form or in a form or in a manner that allows the documents and information that comprise the records to be easily accessible and convertible into written form. The board must ensure that adequate measures exist to prevent the records being falsified and detect any falsification of them. If the board fails to comply, every director commits an offence and is liable on conviction to the penalty (s.190).

## Address for service of New Zealand Company

Company must have an address for service in New Zealand. The address for service may be the company's registered office or another place, but it must not be at a postal centre or document exchange. (s.192)

*The board of a company must cause accounting records to be kept that correctly record and explain the transactions of the company*

## Accounting records and audit of New Zealand Company

The board must cause accounting records to be kept that correctly record and explain the transactions of the company; and will at any time enable the financial position of the company to be determined with reasonable accuracy; and will enable the directors to ensure that the financial statements of the company comply with Financial Reporting Act 1993 and any group financial statements; and will enable the financial statements of the company to be readily and properly audited(s.194).

The accounting records must contain (s.194):

- entries of money received and spent each day and the matters to which it relates
- record of the assets and liabilities of the company
- if the company's business involves dealing in goods, a record of goods bought and sold, a record of stock held at the end of the financial year
- if the company's business involves providing services, a record of services provided and relevant invoices.

The accounting records must be kept in written form and in English (s.194).

Company need not keep its accounting records in New Zealand (s.195).

If the board of a company fails to comply with the accounting records requirements, every director of the company commits an offence and is liable on conviction to the penalty (s.194).

Company need not appoint an auditor if, at or before the annual meeting, a unanimous resolution is passed by all the. Such a resolution ceases to have effect at the commencement of the next annual meeting. Auditor must be appointed for the companies to which section 19 of the Financial Reporting Act 1993 applies; or that is an issuer within the meaning Companies Act. Auditor is not required to audit financial statements of non-active company (s.196). The board of a company must ensure that an auditor of a company has access at all times to the accounting records and other documents of the company (s.206).

The board of every company must, within 5 months after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date (s.208).

The board of a company must send to every shareholder of the company, not less than 20 working days before the date fixed for holding the annual meeting of shareholders a copy of the annual report s.209).

The board of a company must ensure that there is an annual return delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return in the prescribed form or in a form the use of which by the company has been approved by the Registrar (s.214).

Company must keep (s.215) the following records available for by a person who serves written notice of intention to inspect on the company:

- the certificate of incorporation or registration of the company
- the constitution of the company, if it has one
- the share register
- the full names and residential addresses of the directors
- the registered office and address for service of the company.

*The board of every company must, within 5 months after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date*



## Amalgamations of New Zealand Companies

Two or more companies may amalgamate, and continue as 1 company, which may be one of the amalgamating companies, or may be a new company (s.219).

## Removal of New Zealand Company from the New Zealand register

Company is removed from the New Zealand register when a notice signed by the Registrar stating that the company is removed from the New Zealand register is registered under the Companies Act 1993 (s.317). A request that a company be removed from the New Zealand register may be made (s.318) on the grounds:

- that the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its constitution and the Companies Act 1993; or
- that the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court for an order putting the company into liquidation.

A request that a company be removed from the New Zealand register must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being removed from the New Zealand register (s.318).

Where a notice is given of an intention to remove a company from the New Zealand register, any person may (s.321) deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any one or more of the following grounds:

- that the company is still carrying on business or there is other reason for it to continue in existence; or
- that the company is a party to legal proceedings; or
- that the company is in receivership, or liquidation, or both; or
- that the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company; or that the person believes that there exists, and intends to pursue, a right of action on behalf of the company; or
- that, for any other reason, it would not be just and equitable to remove the company from the New Zealand register.

The removal of a company from the New Zealand register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register and that liability continues and may be enforced as if the company had not been removed from the register (s.326).

*A request that a company be removed from the New Zealand register must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being removed from the New Zealand register*

Registrar and/or Court may restore company to New Zealand register (s.328, s.329).

## **Transfer of registration & redomiciliation**

Overseas companies may be registered as new Zealand companies under the Companies Act 1993 (s.344).

Overseas companies must be authorised to register in New Zealand (s.346)

Company may be removed from the New Zealand register in connection with becoming incorporated under the law in force in another country (s.350).