



# Corporate Governance and Compliance Obligations

By Equity Law Chambers

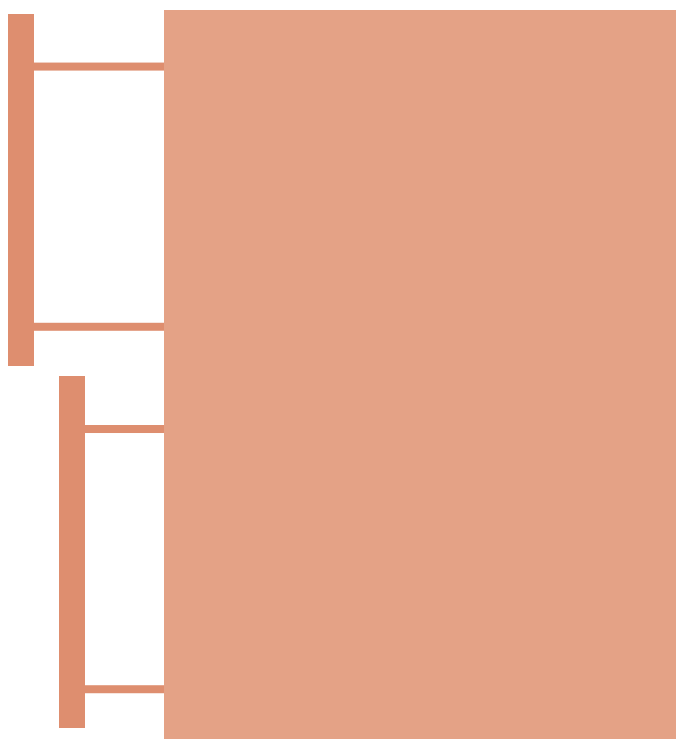
The Companies Act 1993 mandates several obligations relating to not only setting up a Company but ongoing obligations of a Company such as keeping records and filing returns amongst other things. We provide the following information as a brief guideline as to what is required for compliance.

# Documents to be kept at Registered Office

Every company must have a registered office in New Zealand, as well as an address for service, where legal documents can be delivered to the company. Both addresses must be notified to the Registrar on the application for incorporation.

It has to be a physical New Zealand address, not a postal box or document exchange; normally it is the business address of the company or the address of the company's accountant.

If a company wishes to change its registered office or the address for service, the change and the date upon which it is to take effect must be notified to the Registrar. This date must be at least five working days after the notice is registered.

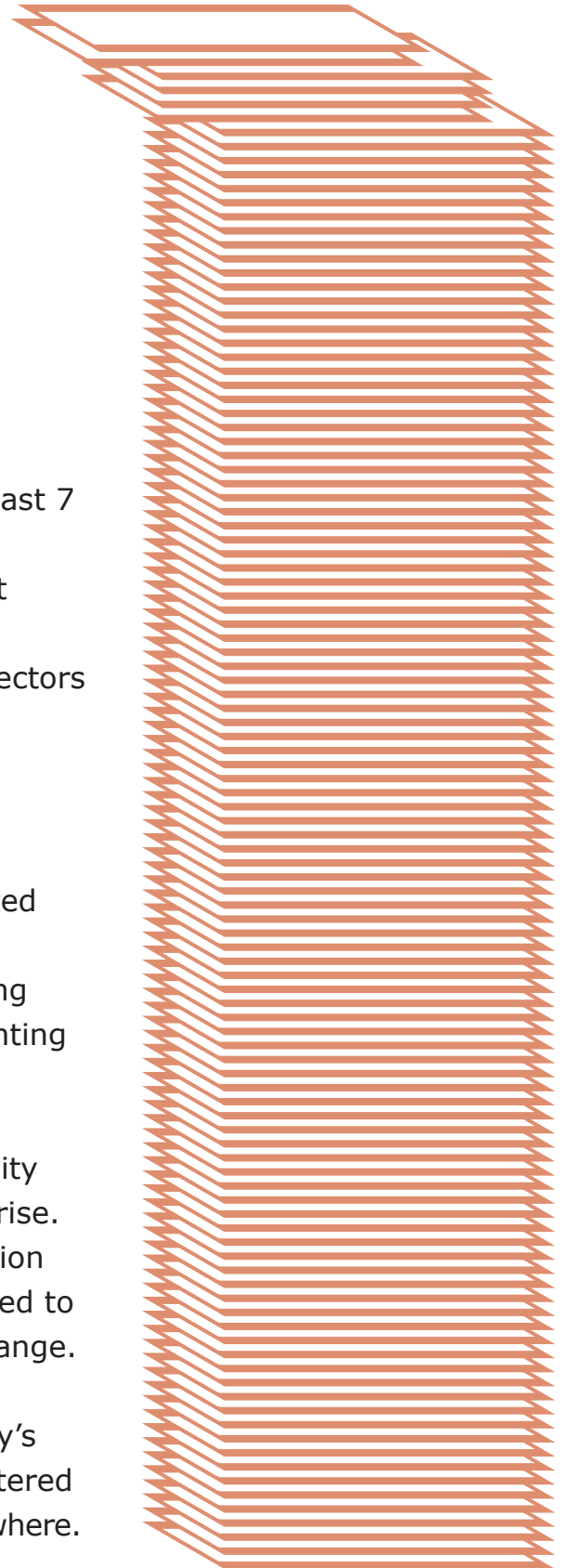


A company must keep the following documents at their registered office:

1. Constitution of the company
2. Minutes of all meetings and resolutions of shareholders within the last 7 years
3. Share register and the register of Director's interests
4. Minutes of all meetings and resolutions of directors and directors committees within the last 7 years
5. Certificates given by directors under this Act within the last 7 years
6. Full names and addresses of the current directors
7. Copies of all written communications to all shareholders during the last 7 years, including annual reports
8. Copies of all financial statements and group financial statements for the last 7 and completed accounting periods of the company
9. Accounting records for the current accounting period and for the last 7 and completed accounting periods of the company
10. Share Register

This is so as to ensure compliance and the ability for inspection of documents should the need arise. You may keep these records at any other location in New Zealand provided their location is notified to the Registrar within 10 working days of the change.

The share register, if undivided, is the company's principal register and must be kept at its registered office. If divided, the registers may be kept elsewhere.



# Directors

Any changes in the director of a company or particulars relating to the director must be notified to the Registrar, if they are one of the following:

- Changes to a director's name or residential address
- Removal from office in accordance with the Companies Act 1993 or the company's constitution.
- Disqualification from holding office as a director
- Appointments
- Resignations
- Deaths

New appointments or resignations must be notified within 20 working days of an appointment being made or a resignation taking effect. The other changes must be notified within 20 working days of the company first becoming aware of the change or event.

A new director must consent to act as a director and certify that he/she is not disqualified from being appointed or holding office as a director. There is a prescribed form of consent - Form 10, which should be completed and attached to the "Notice of Change of Directors and Particulars of Directors". 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.



# Appointment of Auditors

At each annual meeting, a company must appoint an auditor to hold office until the next annual meeting, unless an unanimous resolution is passed at or before the meeting that stipulates that an auditor is not necessary.

## Annual report

The directors 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. The breach of these obligations may cause fine of up to NZ\$5,000 for every director of the company.

Under section 211 of the companies Act 1993 every annual report for a company must

- a. describe the nature of the business of the company or any of its subsidiaries; or the classes of business in which the company has an interest as a shareholder of another company or otherwise;
- b. include financial statements for the accounting period completed and signed in accordance with the Financial Reporting Act 1993;
- c. include an auditor's report if that report is required;
- d. state particulars of entries in the interests register made during the accounting period;
- e. state, in respect of each director or former director of the company, the total of the remuneration and the value of other benefits received by that director or former director from the company during the accounting period;



f. state the number of other employees or former employees of the company who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the value of which was or exceeded NZ\$100,000 per annum, and must state the number of such employees or former employees in brackets of NZ\$10,000;

g. state the total amount of donations made by the company during the accounting period;

h. state the names of the directors and former directors of the company during the accounting period;

i. state the amounts payable by the company to an auditor or as audit fees

## Annual Meeting

Every company must hold an annual meeting of shareholders once in each calendar year. The meeting must be no later than six months after the company's balance date (ten months for an exempt company as defined in the Financial Reporting Act 1993 if all shareholders agree) 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 registration, but must hold that meeting within 18 months of the date of its registration.



# Registers

A company has to keep the following registers:

- a share register
- company records
- accounting records
- a register of charges
- a register of transactions involving self-interest.

## Major transactions and self-interest

If a director of a company is interested in a transaction or proposed transaction with the company, he or she must disclose to the Board of Directors the nature and monetary value of that interest.

Saying “being interested”, the Companies Act means that a director is directly or indirectly materially interested in the transaction. He, for example, is himself a party to the transaction, or is the parent / child / spouse / partner of another party, or has a material financial interest in another party to the transaction; or is a director of another company who will or may derive a material financial benefit from the transaction etc.

Some other transactions may also require special approval before entering into. First of all, this applies to the major transactions. A transaction is major if it includes the acquisition or disposition of property of any kind, whether tangible or intangible, the value of which is more than half the value of the company’s assets before the acquisition / disposition. A transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, the value of which is also more than half the value of the company’s assets before the transaction is considered as a major transaction as well.

A company must not enter into a major transaction unless the transaction is approved by special resolution; or contingent on approval by special resolution.



# Annual Returns

Every New Zealand registered company is required to file annual returns with the Companies Office.

# Accounting Records

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

- correctly record and explain the company's 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's financial statements comply with section 10 of the Financial Reporting Act 1993 and any group financial statements comply with section 13 of that Act
- enable the company's financial statements to be readily and properly audited.

Please feel free to contact us with any questions or queries that you might have regarding setting up a company and ongoing compliance of a company. We can assist you with most of these matters.

## **Equity Trust International Limited**

Level 4, 44 Khyber Pass Rd, Grafton, Auckland, 1023,  
New Zealand

Email: [trust@equitylaw.co.nz](mailto:trust@equitylaw.co.nz)

Ph.: +64(9) 303 3001

Fax: +64(9) 303 2018