

# **COMPANY LAW SUMMARY**



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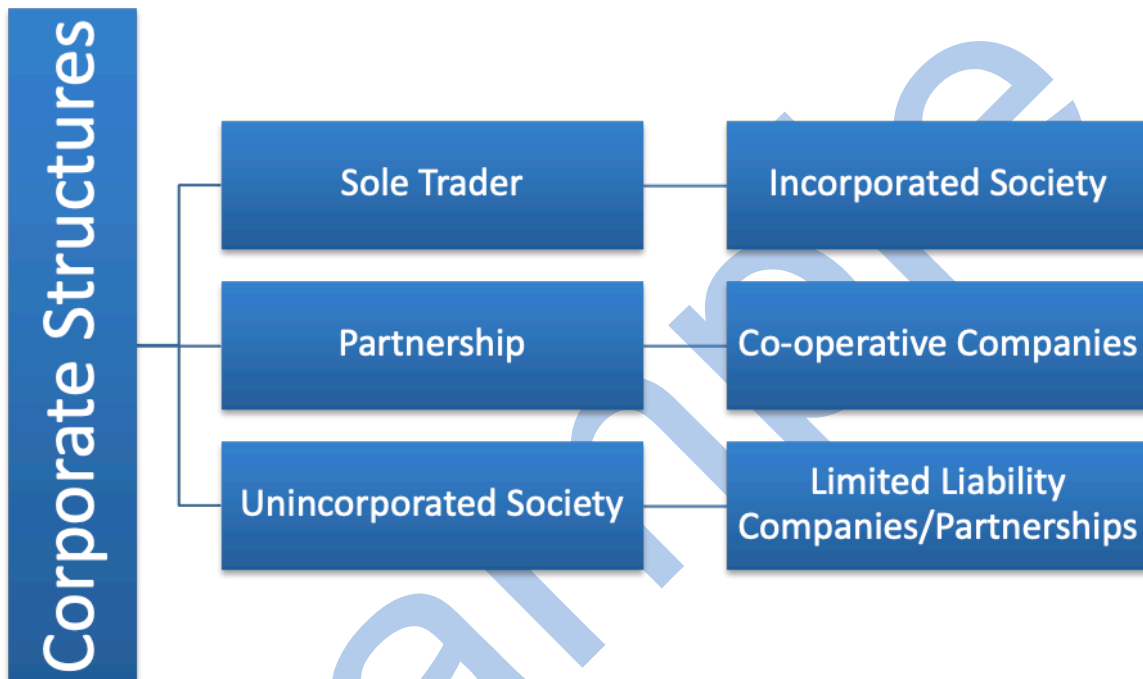
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## Introduction

Company Law is the study of corporate structures in New Zealand and their assorted legal obligations and duties. These obligations arise through fiduciary obligations, directors' duties, common law precedent and statutory limitations.

## Commercial Entities and Their Structures

There are several categories of legal structures:



Each form of corporate structure has an associated Act:

- Partnership (Partnership Act 1908);
- Limited Liability Partnership (Limited Partnerships Act 2008);
- Incorporated Society (Incorporated Societies Act 1908);
- Co-operative Companies (Co-operative Companies Act 1996);
- Trusts (Including the Trustee Companies Act 1967);
- Limited Liability Companies; Company Law Act 1993.

You will be referring to the Company's Act the most, so obtain a hard copy of this as soon as possible to assist you with working through the content of this summary.

The most common form of corporate structure in New Zealand are that of Sole Traders and



Limited Liability Companies. Company Law in New Zealand is strongly governed by the Companies Act 1993. It is important that you familiarize yourself with the core components of the Act – these will be discussed in greater detail below.

<b>MANDATORY SECTIONS</b>	
<b>SUBJECT</b>	<b>SECTION</b>
<b>Incorporation</b> Every company must have a name, one or more shares, shareholders and directors	10
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## Administrative and Legislative Structure of New Zealand Company Law

New Zealand companies are regulated under the Companies Act 1993 (referred to as the Act). Company law is regulated by:

1. **Legislation:** The Companies Act 1993 is the main piece of legislation for companies in New Zealand. There is legislation, however, dealing with discrete topics in company law such as the Takeovers Act 1993, Financial Reporting Act 1993; Corporations (Investigations and Management) Act 1989; Financial Markets Authority Act 2011; Securities Act 1978; Securities Markets Act 1988; and the Receiverships Act 1993.
2. **Administration:** Importantly, company law is regulated by the Companies Office and the Financial Markets Authority. The Companies Office administers the Companies Register. The Register of Companies records basic information about every company available online in an electronic register which is publicly available which in turn builds confidence in businesses by governing the relationships between shareholders, directors and creditors. The Financial Market Authority is to promote and facilitate the development of fair, efficient, and transparent financial markets. The Authority monitors compliance with, investigates and enforces financial markets legislation. This includes investigating the activities of financial market participants and other interested person involved in the market. The Authority also reviews the law and practices relating to financial markets as well as working with other relevant regulatory agencies.
3. **Court Jurisdiction:** the courts interpret Companies Act 1993 and associated legislation.

## The Company as an Individual Legal Entity

### The Basics

Under the Companies Act 1993, a company must have:

- A name which has been reserved by the Registrar of Companies (sections 10 and 20);
- At least one share, shareholder and director (section 10); and
- A registered office and address for service (sections 186 and 192).

Once a person who properly completes the application for the registration of a company, a Registrar must register the application and issue a certificate of incorporation (section 13).

### Classifying Companies

A company can be privately owned or publicly owned. A privately-owned company has a great deal of flexibility in the way that it operates. A publicly owned company, however, that wishes

to be publicly listed needs to comply with the NZX (New Zealand Exchange) Listing Rules. The Listing Rules dictate how a company is to conduct the financial and disclosure aspects of its business. The key difference is that publicly owned companies have more onerous obligations of disclosure to prospective and current shareholders.

## Corporate Capacity and Personality

A company is a **legal entity in its own separate right** from that of its shareholders and continues in existence until it is removed from the New Zealand Companies Register – section 15.

A company has **full capacity** to undertake any activity and possesses full rights, powers and privileges section 16.

## Doctrine of Separate Corporate Personality

Section 15 of the Companies Act codifies the rule set forward in Salomon: In that case Salomon incorporates business and sells to a company. The company then owes Salomon \$10k (via debentures i.e. secured loan) and unfortunately that company goes into liquidation. The liquidator sues Salomon personally on behalf of unsecured creditors arguing company was merely an agent of Salomon personally.

- A. House of Lords held that it was a matter of “form over substance” – once incorporated, a company was a separate corporate personality from shareholders (i.e. S) – shareholder not responsible for company’s obligations – Salomon recoups all of his secured debentures from the company.
- B. A company is a separate corporate personality from its shareholders – the rights and duties attach to the company cf. shareholders, directors and employees.
- C. A company is not an agent for its shareholders (and vice versa) – otherwise the benefits of forming a company i.e. L/L would be redundant.

This separation of Company as a separate legal entity from that of its people and operating structure is a legal fiction known as the **Corporate Veil**. We call it a legal fiction because it is an idea that is determined and superimposed for all limited liability companies as a matter of practice however it is physically impossible for a company to exercise its functions daily or otherwise in and of itself. A company relies on its people such as directors to maintain the operations of the company and make certain decisions or take specific actions on behalf of that company. We know that in reality it is not the company itself making these decisions and taking these actions, but we understand those people to be working on behalf of and directly attribute their behaviour to that company.

## Consequences of Codification of Separate Legal Personality

### A Company Can Contract with its Controlling Shareholder

Lee v Lee's Air Farming      Lee was the majority SH, governing director and chief pilot. The constitution determined that a relationship between Lee and the company was one of worker and leader, Lee being the worker. Lee unfortunately died in a freak accident whilst operating a flight and his wife attempted to claim insurance under the workers compensation scheme in force at the time of the incident. Held at the CA: Since Lee was the governing director and Shareholder who had full control of the company, he could not be considered a worker in the sense of being subservient to the company. This was appealed to the PC. Held:

- A.      Like the HL in Salomon, "form over substance" – a person may function in dual capacities i.e. one hat on; one hat off – L could give and receive "orders"
- B.      The fact one person holds substantially all of the shares (2,999 out of 3,000) does not make the company's business that persons business. A person may be identified with a corporation so as to be its embodiment or directing mind and will, not merely its servant, representative, agent or delegate.

"The fact that so long as [Lee] continued to be governing director, with amplitude of powers, it would be for him to act as the agent for the company ["employee"] to give orders does not alter the fact that the company and the deceased were two separate and distinct legal persons".

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### Shareholders do not have any Legal or Beneficial Interest in the Company's Property

Macaure v Northern Assurance Co      Macaure had a timber farm and took out an insurance policy out over the timber in the yard. This was then on-sold to his company. Macaure did not tell insurance company of sale and unfortunately fire ravaged the yard and destroyed everything. Macaure makes a claim on the insurance and the insurance company refuses. The claim was that Macaure did not have insurable interest in timber as it belonged to the Company, not him in his individual capacity. HOL held: shareholder is neither equitable nor equitable owner of company's property – (even though M was the only shareholder in the company to suffer a loss). Assets of a company belong to that company

cf. the shareholders (they have the last rights to property after govt, secured and unsecured creditors). Shareholders have the rights to profits and surplus upon distribution only.

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### **Shareholders and Directors are Not Legally Responsible for the Companies Obligations**

Trevor Ivory v Anderson      One person company; contract between company and owner of raspberry plantations – Ivory gave wrong advice about killing weeds with spray and crop ruined – Trevor Ivory Ltd was sued for negligence. Issue: even though the company was liable, was Ivory personally liable? HELD: NO. The company was a small company and should take the benefit of limited liability protection.

The fact it was a one-person company is a disclaimer against the assumption of personal liability. For a director-shareholder to be personally liable there must be an assumption of personal liability on their part (usually where a director exercises control over an operation or activity). “Something special” is required to establish assumption of personal liability. Here Ivory made it clear that he was contracting as a limited liability company. Exception possible where directors personally dishonest.

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### **Advantages of the Corporate Veil**

The key advantages of Separate Corporate Responsibility pertain to ownership and responsibility:

1. Limited liability of Shareholders – most important benefit of using the company form
2. Owning property – only companies name needs to be recorded on ownership and transfer documents cf. partnerships
3. Suing and being sued – only person that has to be named in proceedings is company. Also, from TP’s perspective, less costly to enforce proceedings against a company cf. individual SH’s – this may encourage business dealings with company



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