

Companies

Business Law Reform
Private Sector Development
Initiative

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Overview

- Changes to the Companies Act
- Re-registration of companies
- Incorporating a new company
- Using the Companies Registry

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New Companies Act

- Types of companies
- Company rules
- Shareholders
- Director duties
- Solvency

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What types of companies?

- Private companies
- Public companies
- Community companies
- Overseas companies

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Private companies

- Majority of companies in Vanuatu are private companies
- No more than 50 shareholders
- Can have 1 shareholder and 1 director as same person
- Cannot offer securities to public (e.g. shares, bonds)
- Must end with Limited or Ltd

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Public companies

- Companies that are not private companies are public companies
- Can offer securities to public (e.g. shares, bonds)
- Must have between 2-10 directors
- Must end with Limited or Ltd

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Community companies

- Type of private company with special requirements
- Company for **communities promoting a community interest**
- Must end in Community Company Limited

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Why form a community company?

- Helps communities raise funds commercially for community purposes, unlike charities
- Provides protection for community interests through specific special requirements
- Uses the benefits of the company structure to achieve community benefits on a larger scale

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Community Interest

Interest which:

- a) benefits the community **and**
- b) a reasonable person might consider is being carried on for the benefit of the community

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Community companies

- A souvenir shop that supports promotion of sustainable tourism operators in Tanna
- A sports shop that is run to benefit junior soccer development across Vanuatu
- A conference centre that pays for university scholarships to members of a church group
- A company that collects land payments from hotels and invested in improved village infrastructure

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Special requirements of community companies

- No loans to directors or shareholders
- No dividends to shareholders
- 'Lock' on assets to ensure that the community approves of the disposal of assets

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Special requirements of community companies ctd

- Yearly report prepared by directors to include:
 - Director's pay
 - Description of community benefit from the company's activities
 - Description of community consultations undertaken
 - Report on disposal of assets

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Overseas companies

- Companies that are incorporated outside of Vanuatu
- Must be 'carrying on business' in Vanuatu
- Must register within 20 days of starting to carry on a business in Vanuatu

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Company rules

- General provisions
- Shares
- Shareholder relations
- Directors and directors' duties
- Record keeping
- Accounts and audit

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Benefits of company rules

- Clear and written in user friendly way
- Save on costs when incorporating a company
- Simple guide on how company should operate

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Options for moving to company rules

1. Continue to use their existing articles of association (but subject to certain requirements of the Act)
2. Adopt the model rules (each type of company has a version of the rules already drafted in the Act)
3. Amend existing rules to include some of the model rules

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Shareholders

- Can vote on any resolution, including:
 - appointing or removing a director or auditor
 - adopting new rules
 - altering the company rules
 - approving major transactions
 - putting the company into liquidation
 - approving the transfer of registration of the company to a another country

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Shareholders ctd

- Shares issued at re-registration [NOT SURE ABOUT THIS. AT REGISTRATION YES. ON RE-REGISTRATION, NO ACTION NEEDED]
- Rules for issuance and disposal of shares in company rules

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Directors' Duties

- Contained in the Act and at common law
- Directors have control over the company and therefore have special duties

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Directors' Duties ^{ctd}

Fundamental duty:

Act in good faith and in the interests of the company

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Directors' Duties ctd

- Comply with the Companies Act and the Companies Rules
- Conflicts of interest
- Disclosing information
- Duties in insolvency
- Act with care, diligence and skill in management (or supervision) of company

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Solvency

- Two part test:
 - company is able to pay its debts as they become due in the normal course of business, **and**
 - value of the company's assets is not less than the value of its liabilities.

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Solvency ^{ctd}

- Financial statements prepared on the basis of accounting practices and principles reasonable in the circumstances
- Valuation of assets and liabilities
- Other information relating to the financial position of the company as is reasonable in the circumstances.

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Incorporating a company

- Online or using paper
- Need to consider:
 - Company type
 - Company rules
 - Shareholders and shareholding
 - Directors
- Fee: VT 30,000 (online) VT 35,000 (paper)

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Re-registration of existing companies

- New Companies Act requires all existing companies to re-register
- Re-registration simply confirms the existence of your company
- Not a new company
- Does not affect right, obligations or liabilities of the company

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Re-registration of existing companies ctd

- Must re-register within by 31 August 2016
- No fee for re-registration if in first 6 months
- Deregistration has serious consequences for your business

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Using the Registry

- Create your user account – tick organisation
- Create your organisation
- Dashboard
- Add users – manage organisation
- Re-register – search for company
- Follow steps of re-registration
- Demo Authority request business name

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