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Private Sector Development Initiative



Overview

- Changes to the Companies Act
- Changes to Business Names and Charitables
- Using the Registry

Private Sector Development Initiative



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 now have 1 shareholder and 1 director as same person (directors must include human)
- 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

- Replace articles/memo of association
- Sets out rules of how a company must operate eg Shares, director meetings, duties of directors, accounts, audit, record keeping
- Model Rules – available for download

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Benefits of model 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 choosing 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 another country

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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
- To avoid conflicts of interest
- 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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Other key points

- No company seal
- No company secretary required
- Turnover exceeds 50m Vatu must prepare audited financial accounts
- No authorised capital
- Director must include a human
- New registry does NOT apply to Int'l Companies

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Incorporating a company

- Online
- 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 by 31 August 2016
- No fee for re-registration if in first 6 months
- Removal has serious consequences for your business

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Charitable associations generally

- Incorporated committee controlling activities of a charitable association
- Committee can hold assets, incur debts and act in similar ways to a company

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Charitable purposes

- Religious
- Educational
- Cultural
- Scientific
- Sports
- General social welfare
- Other non-profit purpose declared by Minister

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Overview of Changes to Act

- Annual Reports
- Inspection Powers

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Annual Reports

- Within 3 months of the anniversary of the incorporation of the Committee
- Online submission of report or paper form
- Fee: VT 5,000
- Fines for late filing

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Annual Reports ^{ctd}

- Operations only in Vanuatu or other places as well
- Activities in one or more of the charitable purposes
- Financial details, including income and expenses
- Other information on request by Registrar

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Annual Reports ^{ctd}

- Registrar provides notice if report not submitted
- If Committee does not provide report after notice period then a receiver is appointed

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Inspection powers

- Require documents or records necessary or relevant to an investigation or audit
- Make copies of or extracts from documents or records
- Require persons to appear before the Registrar and answer certain questions

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What is a business name?

- Name other than your own used when carrying on a business

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When you're using your own name ctd

Business Name NOT Required	Business Name Required
J. Harrington	Harrington Hardware
Nambawan Meats Ltd	Nambawan Meats Fine Butchers
Baker, Fa'oso and Lonsdale	Baker, Fa'oso and Lonsdale Accountants
Peter Manimu	Tanna Rest Haus

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How to register a business name, company or charitable

- Online at www.vfsc.vu
- Via the Kiosk at VFSC Companies House
- (Paper form)
- Fees- higher fee via paper

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Using the Registry

- Search for an entity and a director/shareholder
- Set up your user account
- Find a company to re-register
- (Set up a new company)

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