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## Factsheet 1: Companies Guide for Solomon Islands Businesses

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### What is a company?

People can choose from several different structures for running their business. The most common structures are a sole trader, a partnership and a company.

A company is a separate legal entity from the owners, who are called shareholders. The significance of this separation is that in most cases, shareholders cannot be personally liable for the debts of the company. If the company fails, generally the only liability of the shareholder is the amount they have invested in the company to purchase their shares. This type of liability is called 'limited liability'.

Another way to look at the separation is to see the company as a separate 'person' from its directors (who are responsible for running the company) and its shareholders. A company can do many of the same things as a person- such as own property, enter contracts, sue, and be sued. There is no separate legal 'person' for sole traders and partnerships.

### Who are shareholders and directors?

The difference between a shareholder and a director is very important even though one person may be both.

The shareholders are investors in and owners of the company. A shareholder agrees with the company the amount he/she should pay for the shares. Unless they are also a director, the shareholder is not involved with management of the company other than in respect of some very important decisions, such as appointing and removing directors, and when the company makes a major purchase.

A director is responsible for managing the company's business activities and together are called the board of directors. The directors therefore owe duties to the company and to the shareholders.

The directors must act honestly and in a way they believe is in the best interests of the company. The directors must also act with care, diligence and skill and must abide by the Companies Act and the company's own internal rules.

### Why would I form a company?

The following are typical reasons why someone might choose to form a company instead of another business type:

**Limited liability-** as explained above, the company is liable for all of the obligations it incurs, not the shareholders. By comparison, a sole trader or a person involved with a



partnership will be personally liable for any business debts that cannot be paid by the business. This is the primary reason people choose the company structure.

**Shareholder control** – the Companies Act allows a good degree of shareholder control through the power of the shareholder to vote on certain decisions, such as removing directors. The shareholder can control the company without the need to be involved with the day-to-day business.

**Continuity of existence**- a company will usually survive changes of ownership, and will continue to exist until it is removed from the company register. A partnership often ends on retirement or death of a partner.

**Shares can be transferred**- It is easier to sell and transfer shares in a company than it is to sell or transfer a partnership interest.

A company will also give the business credibility towards third parties, such as lenders and other people it does business with, because certain information is made available to the public and it has to abide by clear rules under the Companies Act.

Under the new law, one person can form a company, by being the only shareholder and the only director. This way they can exercise full control over their business, but also enjoy the above benefits of having a company.

### **What is a community company?**

A community company is a new type of company in the Solomon Islands existing to promote a community interest. It is an alternative to other structures that have often been used by communities, such as trusts. Their intention is to preserve and grow community assets.

The community interest of the company must benefit a group of people with a readily identifiable characteristic. This might be, for example, people from a particular village, or it might mean a group of cocoa farmers.

The priority of the community company is to ensure that the benefits of running the company are not only received by a few select people, but by the community as a whole.

Day-to-day, the business runs like any normal business, but there are some extra safeguards to ensure that the community benefit is protected. For example, the company cannot make loans to directors or to shareholders, and assets of the business cannot be sold without the approval of the community.

Each year, a report must also be prepared by the directors showing how the company's activities have benefitted the community.

## What is a company name? What is a business name?

A company name ends in Limited, Ltd, Community Company Ltd or CCL. It is the name written on the company register, and approved by the registrar. A company name must not be identical or almost identical to any other company name.

Certain other laws also limit the names that can be given to a company (such as using the word 'Bank' in the company name). The company registrar can reject a company name, and require a change in name if it breaks these rules.

A business name is different to a company name. It is the name usually used in a trading context. For example, a company may have the company name ABC Trading Ltd, and it may own and run a shop, under the business name 'Nambawan Hardware Store'.

Having a business name does not mean you have a company.

## How do I form a company?

You must complete a registration of company form. You can collect the form at the Company Haus, request a copy by emailing the registrar at [esaramo@yahoo.com.au](mailto:esaramo@yahoo.com.au), telephoning Company Haus on 26812 or by asking your industry association, or your department of commerce provincial office.

You can email back a scanned form, fax it to 25084, mail it to PO Box G25 Honiara, or bring it in person at the Companies Registry in Honiara or at one of the regional offices in Auki and Gizo of the Department of Commerce.

The fee for incorporation is payable for all companies except for community companies, and can be paid either in Honiara at the revenue counter at the Ministry of Finance or at the revenue counter offices in Auki and Gizo. Bring a copy of the fee form at the end of this brochure, this will be kept by the revenue counter for their records. Lastly, take the receipt over to the registry in Honiara, or to the regional office in Auki or Gizo, and they will then process your application.

## What are the main obligations of a company?

### - *Share register*

A company must keep a share register that records the shares issued by the company and states:

- In alphabetical order, the names, last known address and the number of shares held by shareholders over the previous 7 years
- Details of any share issues, repurchases, redemptions or transfers of shares.

The share register must be able to tell the story of who, in the last 7 years has owned what shares and how any change in ownership of the shares has happened.

A share register is very important to the shareholder because it is proof that the shareholder actually owns legal title to their shares.

An agent may maintain the share register on behalf of the company.

#### - ***Company Records***

A company must keep a variety of documents at its registered office, including the company rules, minutes of meetings of shareholders and directors for 7 years, accounting records, copies of communications to shareholders and the share register.

#### - ***Accounting Records***

The directors of a company must keep accounting records which:

- correctly record and explain the transactions of the company,
- allow at any time, the financial position of the company to be determined with reasonable accuracy,
- enable the directors to ensure that the company complies with the Companies Act and regulations, and
- will enable the financial statements to be readily and properly audited.

### **What are the rules of the company?**

The company rules govern how a company must operate internally. These rules cover things such as the appointment, removal and powers of directors, rules for meetings and shareholder rights.

A company may adopt its own tailored rules at the time of its incorporation or simply adopt the model rules already contained in the new Companies Act.

### **Annual returns**

The annual return contains the basic details about the company such as shareholder and director details. In return for benefitting from having a company structure, the government requires companies to make certain information available to the public and to keep that information up to date. Submitting this document ensures that the most up to date company details are made available to the public.

The company registrar will allocate each company a month of the year when it must submit an annual return to the Registrar. The annual return must be in the prescribed form, signed by a director, legal practitioner or chartered accountant, and any fee must be paid

within the prescribed time limit, otherwise late charges may apply.

## **Issuing shares**

Immediately after the registration of the company, a company must issue to any person named in the application as a shareholder, the number of shares specified in the application. Further shares may then be issued in accordance with the company's rules, or if all shareholder approve of the issue.

Any issue of shares, including the first issue, must be notified to the registrar within 10 working days of the issue.

In certain circumstances, namely, that the company is solvent, a company may purchase its own shares or may redeem shares. A company is solvent when it is able to pay its debts as and when they fall due, and where the value of the company's assets is not less than its liabilities.

## **Making distributions to shareholders**

Except in the case of community companies, the directors of a company may authorize a distribution by the company at any time, of any amount, to any shareholder it sees fit. However, the company must be solvent after the proposed distribution.

No distributions may be made to shareholders for community companies.

## **Company charges and security interests**

Under the old companies legislation, companies had to maintain a register of charges. This is no longer applicable under the new Companies Act. Company charges over moveable property are now registrable on the Secured Transactions Filing Office website ([www.stfosi.com](http://www.stfosi.com)).

Security interests over moveable property, such as secured loans, leases or hire purchases, can also be searched for in the online Office.

## **Contact Details**

Honiara office: Mendana Ave, in front of Ministry of Commerce building

Direct telephone: 26812

Post: PO Box G 25 (mark attention: Registrar of Companies)

Fax: 25084 (mark attention: Registrar of Companies)

Email: [esaramo@yahoo.com.au](mailto:esaramo@yahoo.com.au)



## Schedule of fees payable for company haus services

*(Pursuant to Schedule 2 of the Companies Regulations 2010)*

*Valid from: 1 July 2010*

### Instructions for customer:

1. Please complete this form and tick the appropriate box and take it to the Central Revenue Collection counter with your cash or cheque, either in Honiara next to the Ministry of Finance and Treasury, or at your provincial revenue collection agency.
2. Please take the receipt issued to you over to the company haus office in front of the Ministry of Commerce building in Honiara or your provincial Ministry of Commerce field office representative. If you do not follow this step, your payment will **not** be effective and the company haus will **not** complete your request.
3. If you wish to avoid frequent visits to the revenue counter, company haus recommends you pay for your filings in advance. For example, if you pay SBD 600 in advance, you will have paid for three years worth of annual returns and will only need to complete the form online. The company haus will credit your account to this amount.

Company name (or proposed Company name): \_\_\_\_\_

Name of person making payment: \_\_\_\_\_

**Tick relevant box (SBD\$)**

For an application to <b>register a company</b>	<input type="checkbox"/>	1,250.00
For registration of an <b>annual return</b>	<input type="checkbox"/>	200
For registration of documents to effect an <b>amalgamation</b>	<input type="checkbox"/>	250
For an application to <b>restore a company to the register</b>	<input type="checkbox"/>	1000
For an application to <b>register an overseas company</b>	<input type="checkbox"/>	2500



For registration of an <b>annual return by an overseas company</b>	<input type="checkbox"/>	500
For an application to <b>change the name</b> of a company	<input type="checkbox"/>	100
For <b>certification</b> of a copy of or extract from any document	<input type="checkbox"/>	150
For various company haus filings paid in advance	<input type="checkbox"/>	Insert amount: ____

For a **copy of, or extract from**, a document that is part of the register, in addition to any fee for certifying the copy or extract:-

(a) if a **photocopy** is made by a member of the public using a photocopy machine provided for public use, for each A4 sheet

5 per sheet  
Total: \_\_\_\_

(b) if a **photocopy** is made by the registrar, for each A4 sheet.

5 per sheet  
Total: \_\_\_\_\_

### Penalties

		(SBD\$)
<b>Failure to deliver</b> a document to the Registrar but providing such document <b>within 25 working days</b> after the time prescribed by the Act	<input type="checkbox"/>	100
<b>Failure to deliver</b> a document to the Registrar <b>within 25 working days after</b> the time prescribed by the Act	<input type="checkbox"/>	400

**Total Received** \_\_\_\_\_