

Maintaining and keeping records

A company must keep and maintain a variety of documents at its Registered Office. Some of that information must also be recorded and maintained with the Companies Office. Many small businesses choose to have their accountant, solicitor or business advisor hold and maintain these records for them.

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Share register

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

- whether there are any restrictions or limitations on share transfer; and
- location of where any document that contains any restrictions or limitations may be inspected.

The share register must also record an alphabetical list of the:

- name(s) of shareholders
- last known address of shareholders, and
- number of shares held by each shareholder

Note

includes both current shareholders and those who have been shareholders within the last seven years). The register must also show the date of share issues, repurchases or redemptions and share transfers. An agent (such as a professional share registry) may maintain the share register of any company.

A share register may be divided into two or more registers and kept in different locations. A notice of the location of each register must be delivered to the Registrar within ten working days after the share register is divided. The share register, if undivided, is the company's principal register and must be kept at its Registered Office. If divided, the share registers may be kept elsewhere, (section 119).

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Issue of shares

After incorporation a company must issue to any person named in the application as a shareholder, the number of shares that the application says the shareholder will receive. After the first issue of shares, the board of a company may issue shares at any time, to any person, and in any quantity it sees fit. This power is subject to the provisions of the Act and any provisions in a company's rules that may modify its right to issue shares. The Registrar must receive notice of the share issue within ten working days of the issue.

A company may acquire its own shares, refer to section 31 of the Act and can issue redeemable shares, refer to section 34 of the Companies Act.

Distributions to shareholders

The board of a company may authorise a distribution by the company at any time, and of any amount, and to any shareholders it sees fit. But before doing so it must be satisfied, on reasonable grounds, that the company will be able to satisfy the solvency test immediately after the distribution.

A company satisfies the solvency test if:

- it is able to pay its debts as they become due in the normal course of business; and
- the value of the company's assets is greater than the value of its liabilities including contingent liabilities.

Refer, Schedule 1 clause 5.

Financial statements (including appointment of auditors)

Every company must prepare financial statements annually. An auditor must be appointed if the company is a public company or in the case of a private company, if the company's rules require an auditor to be appointed or shareholders holding shares that carry the right to receive more than 20% of distributions give written notice to the company requiring that financial statements be audited (section 131).

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;
- will enable the directors to ensure that the financial statements of the company comply with section 130 and with any regulations made under the Act; and
- enable the company's financial statements to be readily and properly audited.

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Annual meeting

Every company must hold an annual meeting of shareholders once in each calendar year. Generally, the meeting must be no later than five months after the company's balance date 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 incorporation, but must hold that meeting within 18 months of its incorporation.

Annual returns

All companies are required to file an Annual Return in June of each calendar year. A company is not required to file an Annual Return in the calendar year of its incorporation.

The Registrar may send an Annual Return form that sets out the prescribed information of the company as it appears on the register. This information needs to be checked and returned to the Registrar with any corrections noted signed by a director of the company or by a solicitor or public accountant authorised for that purpose together with the prescribed filing fee.

Adoption and alteration of rules

A company may adopt rules at the time of its incorporation or adopt the model rules. A company may (by special resolution) adopt new rules or alter its rules or adopt model rules after incorporation. A company must ensure that the adoption or alteration of rules is filed with the Registrar within ten working days of the event taking place.

Filing of documents

Documents lodged for registration must be delivered to the Registrar of Companies together with the payment of any fees. Documents can be delivered by hand during normal business hours or through the post to the following address:

Registrar of Companies
Treasury Department
Niue Public Services
PO Box 36
Utuko
Alofi
Niue