

# Guide to Startups



At Wakefields, we are commercial legal specialists supporting entrepreneurs to successfully launch and grow their business ideas.

This legal **Startup Kit** is designed to highlight the common issues faced by entrepreneurs in the early stages of a business' life cycle and provides guidance on how those issues might be dealt with.

Invariably this will throw up legal questions or work streams that we can assist you on.

Because of our experience, we understand that cash flow is an issue for any business, whether in the startup or growth stage.

allow you to spread your legal spend over the course of the financial year.

We also offer free initial consultations and the certainty of fixed pricing, so that you fully understand the cost implications and can budget accordingly.

The intention is to keep updating this **Startup Kit** to ensure it is delivering relevant and useful information to our clients.

If there is a topic or issue you feel should be added to it, please get in touch by emailing [info@wakefieldslaw.com](mailto:info@wakefieldslaw.com). We would love to hear from you.

We therefore offer flexible payment options that

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## What Type Of Corporate Entity Should I Be?

Typically, we would recommend incorporating as a limited liability company. The benefits are:

- ▶ **Limiting your potential liability for trading activities:** As a shareholder your liability will be limited to the unpaid share capital of the company, unless you have given some form of personal guarantee.
- ▶ **Potential tax benefits:** Company profits are distributed to shareholders, who are taxed individually on their overall personal income. Profits the shareholders do not take are the company's, and get taxed at the company tax rate of 28%.

In a startup situation, it will often take time to decide what each founder is bringing to the table and how shares in the company should be allocated. Although shares can be issued or transferred later, this may result in unintended tax and financial implications, so it's very important to get it right at the outset. We can sit down with you and your accountant or financial advisor to decide on the most appropriate corporate structure from a tax perspective, the best time to incorporate and how shares are to be allocated now and in the future.



*"We can sit down with you to decide on the most appropriate corporate structure and the best time to incorporate."*

## How Do I Form A Company?

You can incorporate a company online at [www.companiesoffice.govt.nz/companies/do-it-now/start-a-company](http://www.companiesoffice.govt.nz/companies/do-it-now/start-a-company) without having to involve a lawyer. However, we recommend that we do it for you to ensure that some of the more complex legal issues are dealt with properly from the outset. This includes:

- ▶ The structure of the share capital (ordinary shares versus preferences shares).
- ▶ Whether you should have a constitution.
- ▶ Whether you register with the IRD as an employer and/or for GST.
- ▶ Whether you elect to be a Look Through Company (**LTC**) for income tax purposes.

For example, we would typically recommend you have a constitution, as it makes it easier to manage the business. A constitution is a document that specifies the rules governing the activities of the company, and the relationship between its directors, and shareholders. A constitution allows you to do things like issue shares and take out director liability insurance without the need for shareholder approval.

Whether you elect to register for GST is an important consideration and not always advisable. As a general rule, the IRD encourages registration if the turnover of the business is likely to be more than \$60,000 per annum. In respect of LTC status, the owners of a LTC are liable for income tax on the company profits, while also being able to offset the losses against their other income. They do this by returning the income and expenses in their own returns. Again electing to be a LTC has advantages and disadvantages and something, along with GST registration, that we can help you navigate in consultation with your accountant or other suitably qualified financial

advisor.

We can incorporate the company for you with a constitution and help you thorough these issues as we believe it's better to get it right at the outset, rather than having to deal with additional legal costs down the line.

*"A constitution is a document that specifies the rules governing the activities of the company, and the relationship between it's directors, and shareholders."*

## What Are The Director Requirements?

All New Zealand companies need to have at least one director who:

- ▶ lives in New Zealand; or
- ▶ lives in an enforcement country and is also a director of a company incorporated in that enforcement country.

The only enforcement country currently named in the regulations is Australia. These resident director requirements do not apply to companies that have been incorporated overseas, but are registered in New Zealand (i.e. a branch operating in New Zealand).

All companies are also required to publicly disclose the name of their ultimate holding company, if it has one. These details must be supplied at the time of registration and will need to be kept up to date.

All directors must be at least 18 years old and not be an undischarged bankrupt.

*"All directors must be at least 18 years old and not be an undischarged bankrupt."*





## What Do I Call My Startup?

It is extremely important that, before you proceed to apply for a company name, you check your market. It is essential to ensure that your company name and brand will not infringe on the intellectual property rights of other businesses. You also do not want to fall victim to “brand dilution” which is the weakening of your name or brand through use of a name or brand which is similar to your competitors. Once you’ve found the perfect name, the next step is to find out if someone has already registered it, either at the Companies Office or as a domain name. We suggest you use ONEcheck: [onecheck.business.govt.nz/onecheck](https://onecheck.business.govt.nz/onecheck). ONECheck is a free tool that checks the availability of company names, internet domain names, and trade marks in one search. If it is not already in use, from the site you can:

- ▶ reserve your company name;
- ▶ register your domain name; and
- ▶ get started with your trade mark (if required – see section below on protecting your intellectual property (IP)).

*“ONECheck is a free tool that checks the availability of company names, internet domain names, and trademarks in one search. Simply enter the name and click search.”*



## **Should I Enter Into An Agreement With The Other Founders?**

Often businesses are started by more than one person which causes a number of issues in respect of shareholding percentages, roles in the business, and ongoing commitment to fund the business and its growth cycles.

Where there is more than one founder (co-founders), you should consider entering into some sort of co-ownership agreement. Co-ownership agreements (typically referred to as shareholder agreements), set out the rules around the governance and conduct of the co-founders and therefore reduce the risk of disputes and losses arising from disagreements. The basics that are typically covered in a co-ownership agreement are:

- ▶ IP assignment provisions – these transfer all relevant intellectual property from co-founders to the company. If this is not done at the outset, there can be potential adverse tax consequences if value builds in the IP.
- ▶ Employment or contract terms for each co-founder to define what each of them will get paid (if value in the business is to be taken by way of salary, rather than dividends) and to deal with such matters as confidentiality and restraint of trade.
- ▶ What will occur to shares owned by a co-founder when they exit the business. For example, the co-ownership agreement may provide that a co-founder may be required to sell some or all their shares to the other co-founders at current market value if they exit the business within a certain period of time.
- ▶ The terms on which any additional funding is provided by each co-founder to meet establishment and growth costs. In the early stage of a business life cycle, often funds provided by a co-founder are simply reflected as loans in their shareholder accounts in the books of the company. This can cause issues with future investors, such as angel investors, who will typically require that the loans are converted to equity before any investment takes place.



Many people consider that they do not need a co-ownership agreement because they have a company constitution. This is not correct, as a co-ownership agreement differs from a constitution. For example, a company constitution governs the administration of the company as a legal entity, not the governance and control of the company's business activities. A company constitution is also a public document, whereas a co-ownership agreement is not, so it can deal with matters of a sensitive nature that you would prefer to keep confidential.

The best time to enter into a co-ownership agreement is at the beginning of your relationship with your fellow co-owners - unless you are looking to introduce professional investors, such as an angel network, down the line, which is often the case with technology startups. In that instance, it may be prudent to wait and see what the professional investors terms are, as often they will impose their own form of co-ownership agreement as a condition of the investment.

*"Many people consider that they do not need a co-ownership agreement because they have a company constitution. This is not correct."*

Where this is the situation co-founders should at least consider entering into what is typically called a share vesting agreement. These agreements provide that, if the founder exits the business before a certain period of time (such as 2 or 3 years), or does not contribute the capital or man power agreed on by a certain date, then the company can buy back their shares at the value in which they were issued – which in a startup is often nil.





## Do I Need Premises?

Most startups are launched from a garage or the dining room table and often do not require physical premises until further down the track. Some, however, require a space at the outset to house staff or store stock. Leasing a commercial property is often the largest fixed cost of the business. It is a complex process, and it is important that it's done right at the outset to protect against unforeseen costs. Issues not commonly understood include:

- ▶ Rent review provisions and the rent ratchet clause, which prevents the rent being reduced on a rent review even if the current market value for the premises may have gone down.
- ▶ The tenant's maintenance and reinstatement obligations, which can lead to significant unforeseen costs.
- ▶ Failure to notify the landlord of the exercise of the tenant's right to renew the lease within the specified time frame. This can lead to the tenancy being deemed a periodic tenancy.
- ▶ Difficulty assigning or subletting the premises because of a narrow 'Business Use' definition.
- ▶ Liability to pay the legal costs of the landlord in respect of preparation of the lease, any renewals, rent reviews, and/or variations.
- ▶ The effect of the 'Improvements Rent' provision.

To ensure that you are fully informed and secure the right premises on the right terms, we can sit down with you and undertake a review of your rental needs and any existing tenancies you have in place.



## Should I Engage Employees Or Contractors Or Both?

Under the Employment Relations Act 2000 (**ERA**), every employee must be provided with a written employment agreement. Even though there is no requirement to have it signed, it is prudent to do so to ensure that the employee knows what is expected of them.

Under the ERA, there are some things that must be in each employment agreement and other things that are usual, but not required - such as the notice period. For example, if you want to make use of the 90 day trial period or want to impose some form of restraint of trade should the employee leave, this must be in your employment agreement which the employee must have signed **before** they commence employment.

Protection of your IP rights should also be addressed, requiring founders or staff who are exiting the business to assign all IP created by them over to the company.

Typically businesses will issue to staff members a staff manual that sets out the company's code of conduct, including its health and safety policies. With the introduction of the Health and

Safety at Work Act 2015, there is significant personal liability on director's that fail to meet the requirements in that Act that are designed to ensure a safe working environment.

Another issue is whether to engage staff as an employee or an independent contractor. In the later situation, the employer avoids holiday pay, Kiwisaver, and ACC contributions. However, if the relationship is really one of employment, then the Courts will treat the relationship as such and all the protective provisions of the ERA will apply. Some factors that imply an employment relationship are where the person works solely for the business; is provided with the tools to undertake their work (laptop, vehicle, etc.); and has open-ended contractor agreement.

We can sit down with you and discuss all these issues to ensure you don't end up with unexpected employee costs down the line.



## What Accounting, Record Keeping & Filing Obligations Are There?

Being aware of your accounting and record keeping obligations will reduce your stress and costs down the line. You are also much more likely to attract angel investors or secure other forms of financing if your books are in order. Under the Companies Act 1993, you are required to keep a range of documents, including:

- ▶ Accounting records that enable the financial position of the company to be determined with reasonable accuracy. Most of our clients use Xero - [www.xero.com/nz/Accounting-Software](http://www.xero.com/nz/Accounting-Software) - as it is easy to use and cost effective.
- ▶ Company records, such as minutes of meetings of directors and shareholders – you can find further information on this at [www.companiesoffice.govt.nz/companies/learn-about/compliance-requirements/maintaining-keeping-records#company-records](http://www.companiesoffice.govt.nz/companies/learn-about/compliance-requirements/maintaining-keeping-records#company-records).
- ▶ Tax records required by the IRD. You have to keep sufficient records to allow the IRD to be able to calculate the income, expenses, and GST liability of the company.
- ▶ The records you must keep must be kept for **7 years**, even if you cease operating (except for incorporated organisations that have been wound up and dissolved) and include:
  - ▶ receipt and payment account books;
  - ▶ bank statements;
  - ▶ invoices (including GST tax invoices);
  - ▶ receipts;
  - ▶ stocktake figures for the end of the financial year;
  - ▶ wage records for all employees, including ESCT, and KiwiSaver records; and
  - ▶ interest and dividend payment records.

*“Engaging an accountant at the outset is a crucial step, as it saves time and money later on.”*

Engaging an accountant at the outset is a crucial step, as it saves time and money later on. We have a number of top accountancy firms that we refer clients to. They are all specialists in the use of Xero and other innovative technologies designed to increase your efficiency and reduce your costs. If you don't yet have an accountant it is time to do so. We can help you make the right selection.

In addition to keeping records, the Companies Office requires a range of information to be filed on its website. They include:

- ▶ Updating company details, such as directors, shareholders, registered office, share capital and the company's constitution (if any) as and when they occur.
- ▶ Annual returns, which provide an annual update on company details. You must file your annual return annually on the date you specify when you incorporate. The exception is that you do not need to file in your year of incorporation.

Failure to file can mean the company is struck off the register and must immediately cease trading.

- ▶ Director certificates each time the company issues additional shares.

For further information on filing obligations at the Companies Office, check out [www.companiesoffice.govt.nz/companies/learn-about/compliance-requirements/filing-requirements](http://www.companiesoffice.govt.nz/companies/learn-about/compliance-requirements/filing-requirements)

*"Failure to file can mean the company is struck off the register and must immediately cease trading."*

## What Financial Reporting Obligations Are There?

Companies with 10 or more shareholders are required to arrange for financial statements to be prepared and audited within 5 months after the company's balance sheet date – typically 31 March every year. Further, they must circulate them to all the shareholders at least 20 working days before the annual general meeting (**AGM**). Companies with fewer shareholders do not have to prepare financial statements or have them audited, unless the shareholders decide to opt in to these requirements.

Regardless of the number of shareholders, a company must hold an AGM within 18 months after its incorporation. From the second year of incorporation onwards, the AGM must be held within:

- ▶ 6 months after the balance date of the company (for most companies, this deadline is 30 September); or
- ▶ 15 months after the previous year's AGM.

The AGM is an opportunity for the shareholders to vote on matters relating to the company, including the company's annual financial reporting obligations outlined above. An AGM (like other shareholder and director meetings) does not have to be held in person (or over Skype, etc.). If that is impractical, the shareholders can all sign a copy of the resolutions that they have agreed upon.



## How Do I Protect My Intellectual Property?

Protecting your IP is becoming increasingly difficult as businesses trade globally. This is particularly acute in the technology space and with the number of new tech businesses being launched. Each country has its own laws around IP protection and companies should plan carefully to ensure that they protect their IP both here in New Zealand and abroad. Set out below are the main ways in which your business' IP can be protected. We can advise you on the protection of your IP generally and support you in registering any patents or trade marks.

### Patents

- ▶ A patent gives you a legal right to stop others from making, using, or selling something you have **invented** for up to 20 years. Your rights only exist in each country or region where your patent is granted. It must be original, novel, and not already in existence. Patent registration is overseen by the New Zealand Intellectual Property Office ([www.iponz.govt.nz/about-ip/patents/](http://www.iponz.govt.nz/about-ip/patents/)). The first step before looking to register a patent is to search their database to ensure the invention has not already been registered.
- ▶ For international protection, the Patent Cooperation Treaty (**PCT**) administered by the World Intellectual Property Organisation (**WIPO**) allows you to file applications in multiple countries and regions. Using the PCT you can apply for protection in over 140 countries through one centralised application process. It has the same effect as filing multiple applications at the same time. For a list of those countries check out [www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=6](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=6).



## **Domestic Trade Marks**

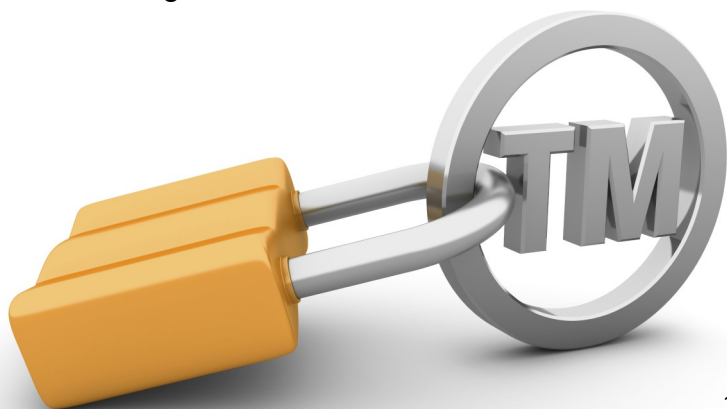
- ▶ Trade marks are the names, logos and brands that you use to identify what you do or sell. For a trade mark to be registered, it needs to be distinctive and sufficiently different from marks already on the register. For example, the term 'budget supermarket' for retail services in relation to food and household items is unlikely to identify one trader from any other and would not be distinctive enough.
- ▶ The benefits of registering a trade mark include:
  - ▶ Exclusive right to use the trade mark throughout New Zealand to promote the goods and/or services it covers.
  - ▶ Use of the ® symbol with the trade mark.
  - ▶ Legal protection to deter others from trying to imitate your brand.
  - ▶ A good trade mark will distinguish your business from others.
  - ▶ Adds value to your business that can increase over time as the mark becomes established in the market.
  - ▶ You can sell or assign the trade mark to another person or business, or license its use to other parties.
- ▶ For further information on the process of registration, check out:

[www.iponz.govt.nz/about-ip/trade-marks](http://www.iponz.govt.nz/about-ip/trade-marks).

## **International Trade Marks**

- ▶ The Madrid Treaty allows you to register your trade mark across multiple countries, so long as they are signatories to the treaty. You can find the list of those countries at <http://www.wipo.int/madrid/en/members/>.
- ▶ Provided you have a NZ registered trade mark (which will need to remain valid for 5 years) the process has a one-for-all approach for each of the key steps - being application, payment of fees, examination and renewals.

*For further information on the process of registration, check out*  
[www.iponz.govt.nz/about-ip/trade-marks/](http://www.iponz.govt.nz/about-ip/trade-marks/)



## Copyright

- ▶ Copyright protects original literary, dramatic, musical and artistic works, sound recordings, films, communication works, and the typographical arrangement of published editions. To attract copyright protection, a work must be 'original' in the sense that it originates from the creator and is not copied from another person's work.
- ▶ Copyright protection applies automatically in all countries who are members of the Berne Convention. There is no formal system for registration, unlike patents and trade marks. A work is protected from the time it is first recorded, either in writing or in some other way, until the end of the life of the author **plus** 50 years.
- ▶ Copyright protects the expression of ideas or information – not the ideas or information itself. For example, if you write a novel, the text will be protected, but not the ideas or plot. Someone could write their own novel using your ideas, without necessarily infringing copyright.
- ▶ There are two main exceptions where the creator is not the owner of the copyright:
  - ▶ where a work is created in the course of employment, the employer will typically be the owner; and
  - ▶ where someone commissions, and pays or agrees to pay for the creation of a work (e.g. a photograph, a computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording), the commissioner will be the owner.
- ▶ These positions can of course be varied by agreement.

*"You don't need to have a notice on the product to protect it, but it is wise to do*

**Note:** You don't need to have a notice on the product to protect it, but it is wise to do so. For example, it is wise to use the following format: © [company name] [year of first publication].

## Should I Have Terms Of Trade?

Many businesses supply goods and services on the basis of informal arrangements, and often disputes arise that could have been avoided if there had been clear, written terms of trade from the start. In particular, having clear terms of trade is an excellent way of minimising and preventing bad debt. The terms of trade should typically consider the following matters:

- ▶ What is the exact nature of the goods and/or services to be provided?
- ▶ Is the price you state fixed or can it be varied (for instance, because of changes in the cost of inputs to the goods or services supplied)?
- ▶ Does the price include or exclude GST and any other taxes or duties?
- ▶ Is the price payable "cash on delivery", or will you give credit?
- ▶ Will interest accrue on the unpaid debt, if payment is not made by the due date?
- ▶ Will the debtor be liable for your legal costs for pursuing the debt?
- ▶ Is a guarantee required, if you are giving credit? This may be necessary when you are dealing with a company, rather than an individual.
- ▶ Does ownership of the goods pass to the buyer when the goods are delivered, or do you, the seller, retain ownership until you've received full payment?
- ▶ Is your liability for defective products to be excluded or limited? If you are supplying goods or services to consumers, you cannot contract out of the guarantees and remedies implied by the Consumer Guarantees Act 1993. However, if the goods or services are acquired for a business, it is open for both parties to agree in writing that the Act does not apply, and that liability is limited to, say, the contract price.
- ▶ Who is to own the copyright in any works that you produce in carrying out the contracted work?
- ▶ Are you warranting to repair any defects in materials or quality of work? If so, for what period are you giving the warranty and what are the legal limitations on the obligations under the warranty?

*"Having clear terms of trade is an excellent way of minimising and preventing bad debt."*

We can assist you to develop terms of trade for use in your business. These will ensure that you are in the best legal position to prevent and minimise bad debt.





## **How Do I Go About Securing Finance With A Bank?**

Very few startup businesses are able to get off the ground without adequate funding. A business loan can provide the capital you need to get your business set up and running.

Just about every commercial bank and building society in New Zealand will offer business loans and finance of some description. In the first instance it is therefore best to talk to your bank or your broker and get a feel for what type of finance is on offer, and what sort of requirements you will need to fulfil.

Many second tier finance companies also offer business loans. However, you might find that you are subjected to a more vigorous application process and significantly higher interest rates. The important thing is to shop around and ensure you are prepared to provide full details about your past and present financial situation, so that the bank or finance company can assess quickly whether you are able to service the lending you require.

In most instances the bank or finance company will be looking for collateral over which they can secure the lending. They may wish to take a mortgage over your home or investment property or look to take a general security interest over all the present and future property of the business. This is often the case when the business has inventory, such as stock-in-trade, which the bank can look to sell in the event that you default on any repayments.

We can advise you on the entry into a business loan and the associated security arrangements, whether it be a mortgage, a general security interest, or a personal guarantee. We can also provide a recommendation on a number of top brokers that we refer clients to to help them secure their business funding.

## How Do I Go About Securing Investor Funds?

If your startup is one that will be looking for investor funds down the line, then you need to plan for this at the outset. We recommend that you maintain all documents that an investor is likely to want to review in a secure location, such as an electronic file saved in the Cloud. Such a file should include:

- ▶ A copy of the current capital table showing all the issued share capital, share vesting arrangements and rights to buy-back the shares etc. (if any to date).

This is simply a record of any shares that have been issued; promises you may have made to issue shares; and any rights to call back shares when the company repays any debt.

- ▶ Copies of all corporate governance documents, such as the constitution, director resolutions, shareholders resolutions.
- ▶ Any share vesting agreements or co-ownership agreements.
- ▶ Copies of all current tenancies.
- ▶ An asset register that records all current fixed assets and any leasing arrangements, together with details of any security granted over any of those assets.
- ▶ A liability register with details and of all loan agreements and other forms of borrowing.
- ▶ Materials contracts, such as agreements with major suppliers, customers, and distribution networks.
- ▶ Information on the business' IP and how it has been protected, such as patents and trade marks.

We can sit down with you and decide what your file should contain and how to best store it and maintain its integrity.

### ***What types of investor funds are there?***

Typically in New Zealand investor funding (as opposed to bank or financial institutions lending) comes from three sources during the life cycle of a startup.

First it is the seed capital provided by the founders or their friends and family. Then, when the business is further down the line, the business may look to secure Angel investment through individual professional investors or a network of investors. Finally (and in a very small number of cases), it may grow to the point where it is seeking investment under a 'Series A' funding round. Each of these are explained in more detail in the following pages.



### ***Seed Capital***

Typically the seed funding is provided by the founders themselves by way of shareholder loans or from loans provided by family members or friends. Often these loans are undocumented and little consideration has been given to how they will be dealt with down the line. For example, will they be repaid on a specified date or will the debt be converted to equity by issuing shares in the company?

This type of funding can cause issues if you go to market and try and entice professional investors to invest in the company. This is because professional investors will often require all loans from founders or other seed providers to be converted to shares as a condition of their investment. This can cause issues where the seed providers do not want to, or cannot afford to, convert their loans to equity.

In the event that this needs to occur to secure

professional investment, the seed providers and company will need to enter into a share subscription agreement to reflect the conversion of the debt to shares. We can advise our clients on how to go about this.

**Note:** These days seeding capital can also come from associations like the Regional Business Partner Network or Callaghan Innovation and potentially a crowdfunding campaign.

*“Often these loans are undocumented and little consideration has been given to how they will be dealt with down the line”*

## ***Angel Investors***

Angel investment is designed to either expedite the process of getting to a Series A funding round, or to massively scale the company.

Typically Angel investment comes from a number of investors who are part of an Angel Club (e.g. Ice Angels in Auckland, Angel HQ in Wellington, Enterprise Angels, Flying Kiwis, Archangels and many others). In that regard, it tends to be syndicated investment. The capital provided tends to range between 100K – 750K and can be a one time investment or ongoing support that helps to further develop the business.

## ***‘Series A’***

‘Series A’ funding rounds are rare in New Zealand compared to the United States. Typically its seen when venture capital companies like MOVAC, GD1 and Spark Box come in and invest over \$1M in a particular venture because that venture has already been proven and has validated itself in the market. The funding is designed to massively scale up the venture, both domestically and internationally.

Further information on how to fund and grow a startup is outside the scope of our **Startup Kit**. For further information, call us or check out Creative HQ. Creative HQ is a Wellington based initiative dedicated to increasing the number of high growth businesses in the New Zealand economy. They provide incubation and acceleration programmes and support startups to better understand their funding options.





## How Do I Put An Employee Share Scheme In Place?

Historically employee share schemes have been rare in New Zealand because of compliance costs under the Securities Act 1978. However, these restrictions were removed by the Financial Markets Conduct Act 2013 (**FMCA**) as of 1 April 2014.

Under the FMCA, shares can be offered under an employee share scheme provided the company provides to its employees the prescribed warning statement; a description of the scheme and its terms and conditions; and a copy of the company's annual report and/or financial statements (or information about how these can be obtained). These can all be included all in a single document making compliance much easier than in previous periods. The offer must also be:

- ▶ part of remuneration arrangements, or in connection with employment or engagement;
- ▶ not for the primary purpose of raising funds; or
- ▶ for not more than 10% of the shares of the company of the same class, as at the start of a 12 month period.

**Note:** "Sweat equity" – where a staff member is issued shares after incorporation in consideration for services rendered – is likely to fall outside the employee share scheme exemption under the FMCA. In such a case, you would need to find another relevant exemption (if any) under the FMCA to be able to issue such shares, such as the relative or close business associate exemption.

A further consideration for any "sweat equity" investment is tax. Employees will derive a taxable benefit if the shares they receive are worth more than the consideration paid for them – i.e. the services rendered. The benefit is taxable in the year the employees are treated as acquiring the shares.

We can provide further guidance on whether an employee share scheme might be an option for your business and, if so, the terms of such a scheme.

**Wellington Office:**

Level 2, Zephyr House, 82 Willis Street, Wellington 6011

**Paraparaumu Office:**

116 Rimu Road, Paraparaumu 5032

**Otaki Office:**

208 Main Highway, Otaki 5512

**Levin Office:**

164 Oxford Street, Levin 5510

**Foxton Office:**

82 Main Street, Foxton 4814

**Phone:** 04 970 3600 **Email:** [info@wakefieldslaw.com](mailto:info@wakefieldslaw.com) **Website:** [www.wakefieldslaw.com](http://www.wakefieldslaw.com)



**Disclaimer:** This information is intended as a guide only. We always recommend you speak with a lawyer regarding your specific situation and needs.