

Module	COMPANY LAW
Jurisdictions	NEW ZEALAND
Legal Expert	TANIA GOATLEY Partner at Bell Gully https://www.bellgully.com/our-people/tania-goatley/ https://www.linkedin.com/in/tania-goatley-0310119a/

Module Scope

Do persons intending to form a limited liability company or companies which to amalgamate meet the requirements for company formation and do they provide the necessary documentation to the Registrar of Companies?

Does an organisation which operates a business comply with its ongoing obligations as specified in the applicable legislation?

Does the organisation have in place mechanisms to ensure compliance with financial and administrative reporting requirements?

Does the organisation issue shares and other securities in accordance with its constitutional and applicable legislative requirements?

Does the organisation abide by applicable provisions relating to the appointment and removal of directors, board management and meetings, and shareholder meetings?

Does the organisation ensure that directors and officers are aware of their duties and responsibilities the running of and activities of the organisation?

Does the organisation have in place policies and procedures to assist directors and officers in fulfilling their duties?

Does the organisation comply with applicable legislative requirements when entering voluntary administration, winding up or being removed from the Register of companies?

Does an organisation that is a climate-reporting entity ensure that its climate statements comply with the requirements of the climate-related disclosure framework?

Module Application

The NEW ZEALAND COMPANY LAW module is intended to inform organisations about all applicable legislated obligations with which they must comply when operating a business. The module also guides directors and officers on how they can fulfill their duties in compliance with legislative requirements. In particular, the module also demonstrates effective practical advice and assistance to the organisation to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the company.

While organisations must comply with a wide array of laws when operating a business, they are mainly governed by the Companies Act 1993 (NZ) and the Financial Reporting Act 2013 (NZ). The module covers the role of the regulators as well as exemptions to the obligations, if applicable, and how they may or may not apply in particular circumstances. For instance, the New Zealand Companies Office administers registry functions and handles matters including but not limited to the registration of companies, reservation of company name, notification regarding relevant changes, registration of financial statements, assessment of application for the incorporation of a limited liability company, the submission of any changes to company details and their annual returns, and assessments of applications for removal of the company from the register. The Commissioner for Inland Revenue also has a role to play when the company ceases to operate a business. On the other hand, the Takeovers Panel and the Reserve Bank of New Zealand manage amalgamations.

The Financial Markets Authority as well as the External Reporting Board have a role to play in regulating companies.

The NEW ZEALAND COMPANY LAW module covers the various regulatory instruments that must be followed in order to ensure compliance with legislated obligations:

- › Acts
- › Regulations
- › Notices
- › Standards
- › Codes of practice

The NEW ZEALAND COMPANY LAW module also covers obligations that organisations have in specific areas such as:

- › Company formation
- › Ongoing obligations
- › Financial and administrative reporting
- › Shares and shareholders
- › Governance
- › Directors' and officers' duties
- › Winding up
- › Climate-reporting entities

The module covers the obligations which must be complied with:

- › prior to incorporation, including pre-incorporation contracts
- › at the time of incorporation
- › at the time of amalgamations
- › in relation to the ultimate holding company
- › in the case of registration of an overseas company

The module also covers the ongoing obligations with which an organisation must comply in relation to the company's constitution, the company's names, contracts and major transactions, registered office and address for service, company records, overseas companies (if applicable), and annual returns.

The module also covers the reporting obligations of companies with a particular focus on accounting records, the financial reporting obligations of large, overseas and inactive companies, obligations of financial market conduct reporting entities, accounting standards, the registration of financial reports, auditing requirements, annual reports and the provision of financial reports to shareholders.

The module advises organisations on their obligations in relation to the structure, issue and transfer of shares and other securities such as debentures, other share dealings, the solvency test, shareholder rights, powers and liabilities, distributions to shareholders and the share register.

The module also covers the governance-related obligations that organisations must meet regarding the appointment and removal of directors, board management and meetings and shareholder meetings.

Directors' and officers' of limited liability companies incorporated in New Zealand are expected to be familiar with the broad landscape of legal obligations to which they are subject as well as more specific obligations relevant to the particular sector they are operating in. In this regard, the module covers the duties of directors and officers of a company including:

- › the duty to act in good faith and in the best interests of the organisation
- › the duty of care
- › the duty to exercise powers for proper purpose only
- › the duty to ensure that information and advice relied upon for decision-making purposes is reliable and received from a competent person
- › the duty to disclose conflicts of interest to the board and to enter them in the organisation's interests register
- › the duty to ensure that any delegation of power conforms to requirements and that effective processes and procedures are in place to ensure that the delegate's and the board's responsibilities are met
- › the duty to ensure that the remuneration and benefits for directors and executives meet legislative requirements
- › the duty to ensure that any indemnity or insurance provided to a director or employee is in accordance with legislative requirements

The module also discusses the legislative requirements with which organisations must comply when they enter voluntary administration, liquidation and when they are being removed from the Register of Companies.

The module is also of relevance to organisations which are climate-reporting entities. In this regard, the module explains the climate-related disclosure framework with which such entities must comply.

The module also covers the possible consequences to organisations, directors and officers that fail to comply with their obligations. These consequences vary considerably depending on the nature and extent of the breach or failure and may include:

- › Monetary penalties
- › Compensation
- › Liability for the company's debts
- › Criminal charges
- › Imprisonment
- › Disqualification of directors
- › Removal of the organisation from the register of businesses
- › Stop orders
- › Compliance directions
- › Cancellation of shares
- › Injunctions

About LexisNexis Regulatory Compliance

LexisNexis Regulatory Compliance® helps you forge a clear path to compliance.

With LexisNexis® content know-how at the core, our compliance registers, alerts, and information-driven solutions make compliance uncomplicated for GRC professionals across the globe.