

Financial Statements

All companies are required to file financial statements with the Registrar of Companies, at least 21 days before each annual meeting of the shareholders of the company and in any event, no later than 15 months after the date when the annual meeting should have been held. The fee on filing financial statements is \$50.00 or \$10.00.

Public companies and private for-profit companies with gross revenue in excess of 4 million dollars or assets in excess of 2 million are required to file *comparative financial statements* that have been approved by the directors (SS.149-154). These must include a balance sheet, a statement of retained earnings, a statement of income and a statement of any change in the company's financial position (Reg. 8).

Holding companies have the option of filing *consolidated financial statements* detailing their subsidiaries' accounts and where this is done, the subsidiaries are not required to file.

Private for-profit companies whose revenue and assets are below the above mentioned levels, must instead file a *Certificate of Solvency*, signed by at least one director of a company and the auditor, if any, made up with reference to the company's assets and liabilities at the date when the financial statements were laid before the shareholders and agreeing with the profit and loss account included in the financial statements (S.155). A Certificate of Solvency must state the amounts shown in the company's balance sheet as the total value of fixed assets, current assets, investments and other assets, the total amount of company's debt and liabilities accrued due at or accruing due within 1 year after the date at which the balance sheet is made out and whether in the opinion of the auditor, the company was at the date at which the balance sheet was made out able or unable to pay its debts and liabilities as they fell due.

Non-profit companies are required to file a duly audited and approved *Balance Sheet* and a *Statement of Revenue and Expenditure* (Reg. 20)

Annual Return

Every company is required to file no later than the 1st of April of each year after its incorporation, an Annual Return (Form 28) made up to 31st December of the preceding year. The Annual Return serves to cross-check compliance with routine statutory requirements and captures current information on primary business activity, shareholding, ownership of real property, territorial scope of operations and details of corporate affiliation. The fee on filing the Annual Return is \$100.00 or \$20.00.

How are the filings submitted by companies processed?

Following receipt of the prescribed documents in duplicate original and the appropriate filing fee, a formality examination is conducted to ensure that the documents have been prepared in accordance with the statutory instructions as to form and a substantive

examination carried out to ensure compliance with legal requirements. In the event of any material deviation from the statutory requirements, this is noted in a report place on a Pending Applications file, which should be checked by persons filing documents in the days following their submission. Where a document conforms to all requirements, it will be registered in duplicate and endorsed with the date of registration. One copy of each registered document is made available to the company for its records.

What records must a company maintain?

A company should generally keep copies of all instruments executed on behalf of the company and other important documents. The Companies Act specifically requires each company to keep a record of its: articles of incorporation, by-laws, any unanimous shareholder agreement, Form 4 and Form 9 notices, proper accounting records and the minutes and resolutions of meetings of the directors and shareholders. Companies must also keep a Register of Members, a Register of Directors and Secretaries, a Register of Debentures where these have been issued and where applicable, a Register of persons to whom conversion privileges, options or rights to acquire shares have been granted. A public company must in addition keep a register of substantial shareholding and a register of directors' holdings (SS.177 - 188).

Why is it important to comply with the Companies Act?

You may be required at some point in time to provide to a supplier, banker or other entity, with a *Certificate of Status* in respect of your company. A Certificate of Status will generally state that a company was formed as of a specific date, is validly existing and is in compliance with the statutory requirements. Whether a company receives a good Certificate of Status will depend on whether a company has made all the required filings.

Apart from delaying financial transactions, non-compliance with the Act may also result in a company being removed from or *struck off* the Register, once the company has been notified of the nature of its default and that default is not remedied within 30 days after the date of the notice (s.511). If struck off, a company may seek restoration by filing Articles of Restoration (Form 25) and paying the prescribed fee of \$300.00 or \$60.00 for restoration, however, before a company's name can be restored to the register, past non-compliance must be remedied. It should also be noted that in certain cases, non-compliance constitutes an offence on the part of a company's directors and officers.

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Domestic Companies: Organisation and Maintenance



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This brochure offers guidance on organising and maintaining a domestic company formed under the Companies Act, CAP. 143, Revised Edition, 2009 of the Laws of St. Vincent and the Grenadines. It is not intended to serve as a definitive guide and should be read together with the applicable legislation.

After a Certificate of Incorporation is issued, a company must engage in a process of organisation in preparation for the commencement of business.

What does organisation of a company entail?

The first directors of a company hold office from the issue of the certificate of incorporation until the first meeting of the shareholders (S.69(2)). Following incorporation, the directors are required to hold an *organisational meeting* (S.65) to transact the following business:

By-laws: A by-law is the instrument that regulates the conduct of a company's affairs. Model by-laws for use by commercial and non-profit companies are set out in the Fifth and Sixth Schedules of the Companies Regulations, respectively. By-laws should be adopted by the directors and later submitted to the shareholders for approval. Filing fees for by-laws for commercial and non-profit companies are \$100.00 and \$20.00 respectively.

Share Certificates: Ownership of shares is evidenced by a certificate signed on behalf of a company stating that such shares of the company as are designated in the certificate are held by an individual or company named therein. The directors should determine and approve the form of the company's share certificates.

Share Issue: An interest in the ownership of a company is known as a share. Shares are personal property and a person who owns shares in a company is known as a shareholder. By operation of law, the incorporator of a domestic company becomes one of its shareholders (S.105(1)(a), S.371(3)). A company is prohibited from carrying on business until it has made an allotment of shares (s.18(2)). Generally, shares may be issued at such times and to such persons as the directors of a company determine. Shares in a domestic company must be without nominal or par value (S.26(2)) and may be issued only when fully paid whether by money or some other consideration (S.30). As the Act prohibits bearer shares, i.e., the issue of shares to the unidentified bearer of a share certificate, it is essential that the shareholder be named in the certificate (S.29(2)).

Appointment of Auditor: The directors may appoint the company's first auditor(s), who will hold office until the first shareholders' meeting. Thereafter, the shareholders appoint the auditors or alternatively may choose to waive the audit requirement (S.163).

Appointment of Bankers: Bankers of the company should be appointed and all necessary banking resolutions executed.

Appointment of Officers: Every company must have a secretary and may also have one or more assistant secretaries (S.59). A corporate secretary may be an individual, another company or a firm. The Registrar must be notified of the name, residential/

registered office address of a corporate secretary and any assistant secretary, within 1 month after the date of appointment (S.178(4)(b)(c)). A filing fee of \$50.00 or \$10.00 is payable on filing notice in the form prescribed (Form 29). Other officers such as a Managing Director or Chief Executive Officer may also be appointed at the organisational meeting.

Common Seal: Every company should have a common seal on which its name is engraved in legible characters. Every document to which the common seal of a company is affixed binds the company.

Fiscal Year: The directors should determine the fiscal year of the company which may be a calendar year or other period of 12 months.

Every director of a company must receive at least 7 days notice of the organisational meeting.

What am I entitled to do if I am a director?

A director is a person authorized to manage and direct the business and affairs of the company. Where a company has more than one director, the directors collectively form the Board of Directors. Directors may either exercise the powers of the company directly or through employees and agents. They may also designate offices of the company, appoint officers, specify their duties and delegate to them certain powers (S.95). Unless otherwise provided, the articles of a company are presumed to empower the directors of the company to borrow upon the credit of the company; issue, re-issue, sell or pledge debentures of the company; subject to Section 53, give a guarantee on behalf of the company to secure performance of an obligation; and mortgage, charge, pledge or otherwise create to secure any obligation of the company a security interest in all or any property of the company that is owned or subsequently acquired by the company (S.96).

Is any duty of care imposed on a company's directors and officers?

In exercising their powers and discharging their duties, the directors and officers of a company must act honestly and in good faith with a view to the best interests of the company and must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (S.97). In determining what are the best interests of the company, directors must consider the interests of the company's employees in general as well as the interests of its shareholders.

How long can a director hold office?

After their appointment by the shareholders (or their confirmation, in the case of first directors), the directors of a company may hold office for a term expiring no later than the close of the third annual general meeting of shareholders after their election. Where no term is stated on appointment, a director will hold office until the next annual general meeting of shareholders. Once a director's term has expired, he may be re-elected once this is not prohibited by the company's by-laws.

What am I generally entitled to do if I am a shareholder?

Unless the Articles of Incorporation provide otherwise, each share in a company entitles the holder to vote at annual general meetings of the company, receive any dividend declared by the company and share in the distribution of the net assets of the company in the event of liquidation. In addition, shareholders are entitled to inspect the records of the company during business hours and obtain copies free of charge (S.190), to receive the company's financial statements at least 21 days before each annual general meeting (S.153), to elect directors (S.69(3)), to approve and change by-laws (S.64(2)), to appoint the auditor of the company (S.162) or waive the requirement for an auditor (S.163) and to approve fundamental changes to the company (S.213).

Shareholders have limited liability in the company, and generally are not liable for its debts. They generally do not actively run the company, however, in many small businesses, shareholders assume these responsibilities by serving as directors and officers. The first meeting of the shareholders of a company is required to be held no later than 18 months after the company comes into existence (S.107).

How do shareholders exercise their rights?

Shareholders generally exercise their influence over how a company is run at shareholders' meetings through resolutions. There are 2 types of shareholders' resolutions; *ordinary resolutions* which require the approval of the shareholders to the extent of more than half of the votes cast and *special resolutions* which require the approval of the shareholders to the extent of at least two thirds of the votes cast. Decisions which shareholders make routinely, such as electing directors, or approving by-laws are dealt with by ordinary resolution. Unusual events, such as changing the corporate name or merging with another company, may only be undertaken under the authority of a special resolution.

What regulatory requirements must be observed by companies generally?

A company is required to disclose certain aspects of its affairs in statutory filings. Every such filing must be signed by an officer or director. The filings required of domestic companies include the following:

Notification of appointments and changes:

The directors and officers of a company are required to notify the Registrar of Companies of any change in directorship (Form 9), registered office location (Form 4) and of any secretarial appointment (Form 29).

Within 15 days of a change of registered office (S.176(2)) or of directors (S.77(1)) and within 1 month after appointment or cessation of a secretary, notice in the prescribed form should be filed with the Registrar of Companies. A fee of \$50.00 or \$10.00 is payable on the filing of every such notice.