

NORFOLK CORPORATE SUPPORT

NCS Newsletter - March 2010

Welcome to 2010 - First Quarter Down...

This is our first quarterly newsletter for 2010, so welcome back to all our regular clients and a big hello to our new clients. Our newsletter will be emailed out in March, June, September and December.

As we're sure you've noticed, this newsletter is a little different to our old newsletters in that it is not a PDF attachment to a standard email—the email itself is the newsletter.

In line with several other important changes we've made to our business early on this year, we've updated the way we're going to deliver our newsletter. Still available in PDF format as a download on our website, we've moved to an HTML Email format—this allows us greater control over many facets of running a newsletter, not to mention the ability to make the newsletter more interactive and *attractive* as well.

Setting Up New Business Structures? (Feature article)

Often small businesses and start-ups are set up in a hurry with great excitement and little attention paid to detail with no consideration or strategies put in place to cater for future unforeseen problems and disputes. Issues such as business names, trademarks, patents, companies, trusts, partnerships, directorships, insolvent trading, asset protection, cash flows, shareholding, taxation, compliance requirements and costs should be discussed at length before deciding on the right business structure.

If the new business venture is not "standard" or involves 2 or more unrelated owners, it is often prudent to draw up a Shareholders or Equity Agreement and/or Partnership Agreement to set the rules right from the beginning. These Agreements cover what happens if:

- One proprietor want to exit
- One proprietor dies or is incapacitated
- Allocation of responsibility between proprietors
- Legal duties to act honestly and in good faith
- Conflict Resolution
- Shareholder Loans

Company Structures/Special Constitutions:

If you are setting up a new company structure for a "special purpose venture" or unique industry or activity with more than one unrelated owner, it is worthwhile researching and getting some legal advice to draft a special Constitution for the company to include any non-standard arrangements or rules for the management of the company.

Complicated "Equity" shareholdings need to be set out with special rights and conditions to protect the relevant interests. Where companies are set up with different Classes of Shares it is important to clearly define the different rights attached to each Class. It is also important to note that "Ordinary Shares" are not redeemable.

Choosing a "name" for a new business?

Registration of a business, company or domain name does not in itself give you any proprietary rights - only a trade mark can give you that kind of protection.

The same word(s) may be registered by different people as business names and trade marks. However, the registered trade mark owner can sue the business owner for infringing the trade mark if the business name owner uses it on goods or services similar to those covered by the trade mark registration.

Feature Article:

[Setting Up New Business Structures?](#) **Pages 1-4**

Also In This Issue:

[Corporations Act Reform](#) **Page 4**

[ASIC To Take Over Regulation Of National Credit Act](#)

Page 4

[Why Is NCS Different To Our Competitors?](#)

Page 5

[NCS Training Seminars 2010](#) **Pages 5-6**

[Signing Documents—The Need For Accuracy](#)

Page 7

NORFOLK CORPORATE SUPPORT

NCS Newsletter - March 2010

Setting Up New Business Structures?

(Continued from Page 1)

What is a Trade Mark?

A Trade Mark is used to distinguish the goods and services on one trader from those of another trader. Registration of a Trade Mark gives the registered owner exclusive use of the trade mark throughout Australia and application can be made internationally as well.

A Trade Mark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these.

For more information on Trade Marks go to www.ipaustralia.gov.au

A Company Name:

Must be registered under the national Corporations Law administered by the Australian Securities & Investments Commission (ASIC). ASIC will register any company name that is not identical to a currently registered company name. However, ASIC takes no responsibility for Civil Action being taken against people registering "similar" company names to those already registered.

A Business Name:

Is a trading name under which the business operates. Registration identifies the owners of the business and is obtained currently under State or Territory legislation. Where trading occurs in more than one state or territory, the business name must be registered under the laws of each one. Registration of a business name is compulsory and must be completed before the business starts trading.

A business name is not a separate legal entity and can be owned by an individual/s or an Australian company/s.

Business Names once registered cannot be changed. If you want to change the name of your business/trading name, you will need to "cease" the existing name and register the "new" name.

A Domain Name:

Is a textual address for a location on the Internet which corresponds to the actual alpha numeric address which the Internet computers can read.

Be aware that domain name allocation rules have changed so that you may now be able to register a domain name that matches your trade mark or registered trade mark application, even if it is not your registered business name (If this name has not already been allocated).

For more information on the new domain names eligibility and allocation rule, see the .au.Domain Administration (auDA) Ltd website.

You can register your domain name as a trade mark as long as it meets the requirements of the Trade Marks Act 1995.

Ordering New companies, trusts and business names:

It is worth mentioning here that it is also very important to take the time to get all your client's details correct before completing the relevant order forms! Once your order form is received at NCS, we usually process them immediately if possible.

Continued on Page 3 ...

Feature Article:

[Setting Up New Business Structures?](#) **Pages 1-4**

Also In This Issue:

[Corporations Act Reform](#) **Page 4**

[ASIC To Take Over Regulation Of National Credit Act](#)

Page 4

[Why Is NCS Different To Our Competitors?](#)

Page 5

[NCS Training Seminars 2010](#) **Pages 5-6**

[Signing Documents—The Need For Accuracy](#)

Page 7

NORFOLK CORPORATE SUPPORT

NCS Newsletter - March 2010

Setting Up New Business Structures?

(Continued from Page 2)

Ordering New companies, trusts and business names: (continued)

Please note that once the Registration form is lodged with ASIC (for new companies) or Consumer Affairs (in the case of a business name), the information is on the public record and cannot be changed, corrected or amended without lodging another form to notify the relevant authority of the change or error.

E.g. Director's name advised as "Allan Addison LAVERY" BUT it is actually "Allan ADDISON-LAVERY". We would have to prepare a [Form 492 Request For Correction](#) form noting the error and provide a copy of our order form, original Minutes, Consent of the Director to Act, signed by the Director in the correct name.

Subsequently, this ASIC Form 492 would have to be manually lodged with ASIC (via "snail mail") and be processed at ASIC's leisure to correct this error. The original incorporation documents will have to be re-printed to show the correct name. This is quite frustrating for ALL concerned and unfortunately we have to charge a small additional fee to cover our time when these errors on order forms occur.

Where incorrect details have been advised on a new Trust order, the Lawyers who prepare the Trust deeds will often charge an additional fee to amend the original order.

Additional time and cost is incurred to correct, incorrect order forms.

Where incorrect details have been advised on a new Trust order, the Lawyers who prepare the Trust deeds will often charge an additional fee to amend the original order.

Hints for completing order form/s:

- All order forms should be preferably "typed" in hard format and emailed or faxed or ordered Online from our website. Handwritten forms are sometimes illegible and there is more margin for error. We do not accept Orders over the phone to avoid miscommunication of names and addresses to avoid costly errors!
- Please advise full names of all director/secretaries, including second Christian name where applicable. (No "nicknames" or abbreviations)
- Please advise date and place of birth, together with town/city/country of birth e.g. Greece is insufficient, we need the Town/City in Greece? As well. (please don't just "guess", if you don't know please contact your client.)
- Make sure your client is certain about their "choice of name" for their new company because once the registration form is lodged with ASIC, they will not alter the company name, even if your client has misspelt the name in error! The only way the company name can be changed is by the Members of the Company resolving to Change the Name and lodging an additional Form (205) with ASIC and paying ASIC a \$330 fee!
- If you are ordering companies with different Classes of Shares, you must advise the different "Rights" attached to each Share Class.
- If you are ordering a "Special Purpose" company, e.g. a "Superannuation Trustee Only Company", you must complete a different order form from the standard "trading company" order form or advise us when ordering. (Superannuation Trustee Only Companies have a slightly different Constitution to trading companies because the Constitution must state that its sole purpose is to act as trustee of a Superannuation Fund).

Continued on Page 4 ...

Feature Article:

[Setting Up New Business Structures?](#) **Pages 1-4**

Also In This Issue:

[Corporations Act Reform](#) **Page 4**

[ASIC To Take Over Regulation Of National Credit Act](#) **Page 4**

[Why Is NCS Different To Our Competitors?](#) **Page 5**

[NCS Training Seminars 2010](#) **Pages 5-6**

[Signing Documents—The Need For Accuracy](#) **Page 7**

NORFOLK CORPORATE SUPPORT

NCS Newsletter - March 2010

Setting Up New Business Structures?

(Continued from Page 3)

Ordering New companies, trusts and business names: (continued)

- If your client is wanting to register a new company in the name of an already registered "Business Name", then your client must own the currently registered "Business Name". Hence you need to provide the Registration Number of the "Business Name" and tell us your client owns the name on the order form for the new company.
NOTE: If your client's chosen name exists as a business name and they *don't* own it, they may not have the name as Company jurisdiction is nationwide, so State registered names will block company applications with the same or similar name.
- When ordering a Discretionary Trust, please note that the "Settlor" of the Trust cannot be a beneficiary of the Trust.
- An Individual cannot hold the assets in Trust for him or herself as the ATO would rule "there was no trust"! You would need to have "Joint Individual Trustees" or a "Corporate Trustee".
- When ordering new "Business Name/s", please try to always give us a "second and/or third preference" because if Consumer Affairs reject your client's first option and we have given them no second or third option, then your client loses part or all of the registration fee paid (depending on the State/Territory where the application is lodged).

Corporations Act Reform For Co's Ltd By Guarantee

The Australian Government recently released for comment an exposure draft of the *Corporations Amendment (Corporate Reporting Reform) Bill 2010 (draft Bill)* to amend the *Corporations Act 2001 (Cth) (Corporations Act)*.

This draft bill proposes to:

- Lessen reporting and auditing obligations of companies limited by guarantee;
- Allow for simplified directors' reports for some companies;
- Allow smaller companies limited by guarantee to send a copy of the company's annual report only if a Member requests it rather than having to send all Members a copy in either hard or electronic media;
- Allow for 5% of Members or ASIC to direct companies limited by guarantee to prepare a financial report or a directors' report;
- Prohibit companies limited by guarantee from paying dividends (Currently, the Corporations Act does not prohibit companies limited by guarantee from paying dividends, though this is a common prohibition in many company limited by guarantee's constitutions.)

More details on these proposed changes will be in a future NCS Newsletter, once the legislation has been passed and implemented.

ASIC To Take Over Regulation Of National Credit Act

On 1 July 2010, the Australian Securities and Investments Commission (ASIC) will takeover the regulation of consumer credit and finance broking under the *National Consumer Credit Protection Act 2009 (National Credit Act)*.

From 1 April 2010 until 30 June 2010, persons who engage in credit activities will be able to apply to ASIC to be registered. From 1 July 2010, they will be able to apply for an Australian credit licence.

Note: For an explanation of "credit activities", credit contracts, consumer leases and credit services, see ASIC's Regulatory Guide 203 Do I need a credit licence? (RG203).

Feature Article:

[Setting Up New Business Structures?](#) **Pages 1-4**

Also In This Issue:

[Corporations Act Reform](#) **Page 4**

[ASIC To Take Over Regulation Of National Credit Act](#)

Page 4

[Why Is NCS Different To Our Competitors?](#)

Page 5

[NCS Training Seminars 2010](#)

Pages 5-6

[Signing Documents—The Need For Accuracy](#)

Page 7

NORFOLK CORPORATE SUPPORT

NCS Newsletter - March 2010

Why Is NCS Different To Our Competitors?

Many of our clients do not realise that we have three distinct areas of our business and offer much more than the standard "Shelf Company" providers.

This year we've had three new brochures designed to market our different services.



Our new brochures cover the following areas:

- Training Courses in ASIC Compliance for Companies
- Onsite Company Secretarial Support & Remote Access Support
- Corporate Registry Services—covering our general business services.

We have available, for ease of transmission, PDF copies also should you be interested in learning a little bit more about our business. If you would like a copy of any of the above, please call or email our office to have the brochure(s) emailed to you, or they can be downloaded from our website—www.ncs-services.com.au

NCS Training Seminars 2010—ASIC Compliance

Our training seminars in *Corporate Secretarial Practice and ASIC Compliance* were quite well received around the country last year. We've had encouraging feedback from attendees in the various states we visited and have had the request to visit several other states this year.

In answer to the apparent need for this training, we've revamped the information included in the seminar and training notes and are looking forward to a whole new year of training in both *Introductory* and *Non-Standard ASIC Compliance for Companies*.

It is our hope to get to Western Australia and Sydney this year, so we are putting out a call for anyone who is interested to please register your interest online at our website so we can determine if our minimum requirements to bring us interstate can be met.

Continued on Page 6 ...

Feature Article:

[Setting Up New Business Structures?](#) **Pages 1-4**

Also In This Issue:

[Corporations Act Reform](#) **Page 4**

[ASIC To Take Over Regulation Of National Credit Act](#)

Page 4

[Why Is NCS Different To Our Competitors?](#)

Page 5

[NCS Training Seminars 2010](#)

Pages 5-6

[Signing Documents—The Need For Accuracy](#)

Page 7

NORFOLK CORPORATE SUPPORT

NCS Newsletter - March 2010

NCS Training Seminars 2010

(Continued from Page 5)

We're doing things a little differently than we have in previous years and have included our whole seminar dates calendar within our promotional materials and not simply targeting each individual area, especially in Melbourne.

A copy of our seminar dates have been included for your reference and for you to forward to any colleagues or firms you know that might be interested or benefit from attending.

2010 Training Seminar Calendar

You can book or register your interest online at our [website](#)

VICTORIA

Thursday April 15 - Ringwood
Book before March 25 and save 20%

Thursday April 22 - Burwood
Book before April 1 and save 20%

Thursday May 13 - Melbourne CBD
Book before April 22 and save 20%

Thursday May 20 - Preston
Book before April 29 and save 20%

Thursday August 12 - Geelong
Book before July 12 and save 20%

Thursday August 26 - Ballarat
Book before July 26 and save 20%

Thursday October 28 - Frankston
Book before September 27 and save 20%

NEW SOUTH WALES

Friday June 4 - Sydney
Book before May 4 and save 20%

QUEENSLAND

Thursday July 22 - Brisbane
Book before June 22 and save 20%

WESTERN AUSTRALIA

Thursday September 9 - Perth
Book before August 9 and save 20%

SOUTH AUSTRALIA

Thursday October 7 - Adelaide
Book before September 7 and save 20%

TERMS & CONDITIONS

NCS Reserves the right to alter course dates, venues and times.
The minimum number of participants will vary depending upon venue and state.
If minimum numbers are not achieved, the course will be cancelled and Registration Fees either not processed or refunded.
All registrations will be confirmed, a receipt for payment issued and detailed instructions on how to get to the venue, times and a map will be provided.
See website for full Terms & Conditions.

Feature Article:

[Setting Up New Business Structures?](#) **Pages 1-4**

Also In This Issue:

[Corporations Act Reform](#) **Page 4**

[ASIC To Take Over Regulation Of National Credit Act](#) **Page 4**

[Why Is NCS Different To Our Competitors?](#) **Page 5**

[NCS Training Seminars 2010](#) **Pages 5-6**

[Signing Documents—The Need For Accuracy](#) **Page 7**

NORFOLK CORPORATE SUPPORT

NCS Newsletter - March 2010



Signing Documents—The Need For Accuracy...

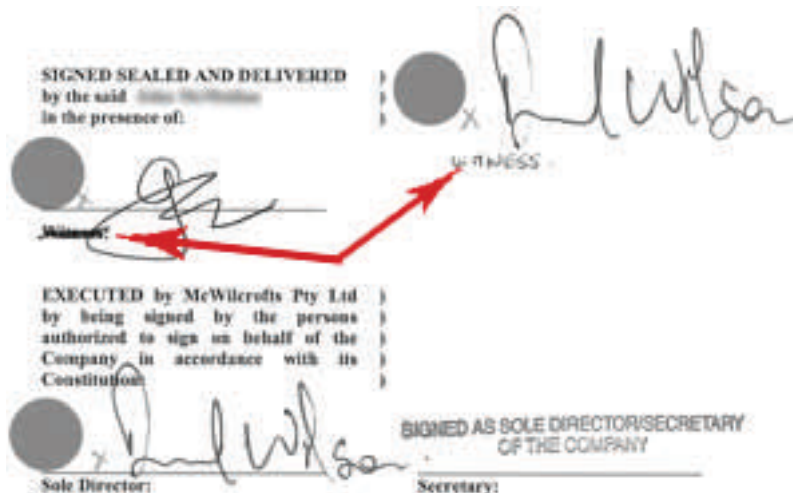
Over the last year-or-so, we have noticed that many new Trust Deeds are not being signed properly.

This can cause time-consuming delays for your clients wanting to open a bank account in the Trust name as soon as possible.

If the Trust Deeds are not signed properly or your client has signed in the wrong place, we often have to return them to you. Subsequently your firm has to either ask your client to come to your office to re-sign the documents or send them by snail mail for re-signing.

Then, of course, the documents have to be returned to NCS for arranging 'stamping' at the State Revenue Office.

Below is an example of a trust deed that was signed by the Trustee in the "Witness" area, and so had to be altered by hand to change the signature areas to where the witness actually signed.



In this instance, the client was able to simply cross out the original Witness field and re-write it under the actual witness' signature.

NCS always indicates by "red dots" and "sign here" stickers etc. where the documents have to be signed. See example below:



X

One of the ways we try to ensure that signatures are marked in the correct spot is by adding a small red dot with the person's name written on-or-beside it, where there are more than one person involved.

Please note that the "settlor's" signature must be witnessed by an independent person over the age of 18 years.

It is worth taking the time to make sure all your staff are familiar with these documents and can advise your clients how to sign them.

Feature Article:

[Setting Up New Business Structures?](#) **Pages 1-4**

Also In This Issue:

[Corporations Act Reform](#) **Page 4**

[ASIC To Take Over Regulation Of National Credit Act](#)

[Why Is NCS Different To Our Competitors?](#) **Page 5**

[NCS Training Seminars 2010](#) **Pages 5-6**

[Signing Documents—The Need For Accuracy](#) **Page 7**