

How to Protect the Purpose of Your Business: Otherwise Known as ‘Mission Lock’

The number of social enterprises in Aotearoa New Zealand has been growing rapidly in recent years. If your business prioritises a social or environmental mission, then you’re probably operating your business as a social enterprise too. One of the most important aspects of creating a business structure for social enterprises is how to ensure your mission is embedded, or locked into, the social enterprise – also known as ‘mission lock’. Mission lock is an important aspect of a social enterprise’s governance, publicly demonstrating your commitment to that social or environmental mission. Mission lock also makes it more difficult for a mission to drift (where it changes/reduces over time), which can happen for a number of reasons.

How to lock your mission

The strongest way to protect your mission is to register for charitable status, however this won’t be suitable if you intend on making private profit from the business. If that’s the case, below are the best ways to protect the mission of your business:

- Describing your mission in the documents governing the business (for example, within the constitution of a limited liability company); and
- by ensuring that the directors of the business are familiar with the mission of the social enterprise, and aware of their legal duties to act in accordance with the business’s governing documents.

Examples

Below we have set out a few examples of how you can increase the protection of your mission within a limited liability company.

- Including a clause in your company’s constitution that clearly states the mission of your company. Stakeholders can then assess and measure business decisions against these statements – having a clear mission statement sets well-defined expectations to potential customers, suppliers, employees and shareholders about the purpose of the company.
- Formally restricting the company’s capacity, rights, powers and privileges under section 16(2) of the Companies Act 1993 to achieving your company’s stated mission. Such a constitutional restriction means that the company will legally only be able to act within the bounds of that restriction. If you wish to impose such a restriction in the constitution, you should expressly specify the nature and scope of the relevant restriction(s) to ensure the restrictions achieve their intended effect. The constitution of a company is legally binding. Directors of a company have a legal duty to act in accordance with the constitution. As such, setting out clear rules about how the business is to achieve its mission should guide the decisions made by directors about how the business is run.
- You can impose requirements in your constitution on how the mission can be amended, including (for example) a requirement that the mission can only be changed with the support of at least 75% (or such higher percentage as you may elect, including 100%) of shareholders. This ensures the mission can only change with the overwhelming (or even unanimous) support of shareholders, creating greater certainty around your company’s mission, and setting a clear expectation that this mission will not change without good cause.
- Where your company has a shareholders’ agreement, you can also include clauses to protect the mission of the company as you would in a constitution. This provides an alternative and private (as a shareholders agreement is not publically available as a constitution is) to achieve the above protection.

For more information on how to protect your mission, we suggest speaking to your lawyer, or getting in touch with organisations like the Ākina Foundation.

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