

BOOK REVIEW

CLOSELY HELD COMPANIES – LEGAL AND TAX ISSUES BY ROBERT DUGAN, PETER MCKENZIE QC AND DAVID PATTERSON⁺

*By John H Farrar**

The Companies Act 1993 represented a significant departure for New Zealand Company Law. At one blow, New Zealand departed from the UK model, rejected the Australian model in spite of CER obligations and adopted the North American model, based on Canadian legislation. This was a bold step which a specialist committee chaired by an expert judge would probably not have taken. It had advantages and disadvantages. One of the advantages was to be user friendliness. One of the disadvantages was the absence of clear guidance for small incorporated firms. Some of us who were involved in the process (and we were never quite sure how much we were involved in the process because of the sometimes eccentric modus operandi of the Law Commission) criticized the lack of attention to the needs of these companies, numerically the majority of registered companies. We thought that the act should at least contain a simplified model constitution for such companies. It was not to be. The act would suffice and of course it does not. Where it might simplify the life of the former Fletcher Challenge Ltd and Brierley Investments Ltd it did little for Mum and Dad Dairy Ltd but complicate the lives of the proprietors.

With this in mind it is with relief that we turn to the present work which is an outstanding piece of original scholarship as well as practical advice on the governance, accounting and taxation aspects of closely held companies.

Part 1 describes the regulatory framework, Part 2 governance, Part 3 typical structures, Part 4 transactions and Part 5 sums up the overall effect of the legislation.

Part 2 on governance focuses on the section 107 unanimous shareholder assent which seems narrower than the common law, the possible confusion embedded in section 42 share issue resolutions and the role of the shareholder agreements.

⁺ CCH New Zealand Limited, Auckland (2000).

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Part 3 which is very practical deals with one person companies, two person companies, Mum and Dad companies and companies with three members. Part 4 is also very useful and deals with matters such as share issues, returns, buy outs and financial assistance.

Overall, the authors favour some reform based on the US limited liability company acts which 'contain a minimalist mandatory core comprising only those rules warranted by the unique features of the company form, and allow members of the same freedom to regulate their affairs by freedom as they enjoy in relation to other commercial transactions'. (Para 2613).

Much of the careful and critical scholarship in this book is based on Bob Dugan's expertise in US as well as New Zealand corporate law and practice. In this he is ably assisted in Peter McKenzie QC's deep knowledge of Commonwealth company law and securities regulation and David Patterson's skill in company law and taxation. New Zealand is fortunate to have a work of this quality in an area of great need at the present time. It is unfortunate that there is no definitive work on the act as a whole. Perhaps the present authors can be encouraged to tackle the larger task in the future. In the meantime, we shall continue to rely on the coverage in Morison, Anderson and the CCH looseleaf service and the lucid guide by David Jones and guidebook by Borrowdale and Beck.