



QUESTION:

I need to have a new property management company incorporated for a new development of six apartments. What type of company would be best suited to this project?

ANSWER:

Most property management companies will be incorporated as companies limited by guarantee (“**guarantee company**”) and not having a share capital. As non-trading entities, it is appropriate to structure these companies in this way.

These companies are employed as:

- vehicles to hold the title to property in common ownership; and
- take charge of the management of the property.

In practice then as each property unit is sold by the by the developer, the purchaser would be obliged, on foot of the purchase agreement, to become a member of the Management Company. Thereby when all the property units have been sold and all the purchasers have become members, the developer/development company would cease to have any involvement/interest in the management company. Thereafter the Management Company and its activities would be under the control of and managed by the property owners. This would include taking responsibility for any common property vested in the Management Company.

However, a difficulty can arise in cases where the **number of properties in the development is less than seven**, which is the minimum number of members in a guarantee company. In these cases the appropriate corporate vehicle would be a **private company limited by shares**.

On incorporation **ALL** of the Company's issued shares would be held by the developer/development company. The number of shares to be issued would be **determined by the number of property units in the development**. In the current situation the number of units is **SIX**, so on incorporation **TWELVE** shares would be issued. All of these shares would be held by the developer/development company and/or its nominee(s). In this way the developer/development company has full and absolute control over the Management Company.

As each property unit is sold, the purchaser, on foot of the terms of the Purchase Agreement, would become a shareholder in the Management Company. This would be achieved by the developer/development company transferring **ONE** share to the purchaser. This exercise would be repeated in respect of the remaining five sales. However, at all times during this process the developer/development company would retain majority control of the Management Company. Following the sale of the last remaining property, the developer/development company would then transfer **ONE ADDITIONAL SHARE** to each purchaser. By this mechanism, the developer/development company exits the Management Company and the property owners assume full and exclusive control over same.

Ongoing Compliance obligations:

Experience has shown that many Property Management Companies find themselves in arrears with the preparation and filing of Annual Returns/financial statements and more critically, struck-off and dissolved for non-compliance. Should a company find itself struck-off the Register of Companies for such non-compliance, this could result in the company having to seek a reinstatement Order from the High Court. The attendant legal costs and expenses have been known to reach approximately €10,000. To say nothing of the lengthy timeframe to reach conclusion of the reinstatement process. One can imagine the added burden all of this would impose on property owners trying to organize the sale of their property.

Compliance regulations become ever more daunting with the passing of every new piece of legislation. The Registrar of Companies now refers all defaulting companies to the Director of Corporate Enforcement for investigation. He will then decide whether or not to institute legal proceedings against these companies or their officers. The penalties for filing Annual Returns late are now quite significant. To file **even 1 day late** will now attract a penalty of €103. This penalty increases by a further €3 for each and every additional day the Return may be late up to a maximum of €1,240.

One can therefore appreciate the value of placing Compliance work in the hands of professionals.

Not every company can justify the cost of employing a qualified Company Secretary to attend to such matters. Here at **ICC** we can provide the solution. We will provide the services of our dedicated Company Secretarial Services Department to address all compliance needs. Indeed, we can even provide the services of our in-house trust company to act as named secretary to client companies. A fixed annual fee is set for this facility. Any ancillary work then undertaken would be charged out at normal charge-out rates.

Full details are available on request. Why not give us a call on 01 240 5830 to discuss in more detail.

Commentaries on provisions of legislation are not intended to be a legal or comprehensive interpretation. Professional advice should be sought in specific circumstances. For further information on statutory requirements, or any provision of the Companies Acts, 1963 to 2009, please contact our Company Secretarial Department on:

FREEPHONE: 1800 677 677 TEL:01 240 5805 FAX: 01 240 5806

or alternatively you can e-mail us at

sales@iccformations.ie

ICC Formations, ICC House, 17 Dame Street, Dublin 2.