

Australian Regulatory Framework: ASX operates in a highly regulated environment overseen primarily in Aust by 2 independent Australian government agencies – The Australian Securities and Investments Commission (ASIC) & the Reserve Bank of Australia (RBA). These govt regulators have extensive powers to enforce the laws and regulations that govern financial markets in Australia.

Effect of registration: s119 upon registration, a coy comes into existence as a separate body corporate or Separate legal entity (*Salomon v Salomon & Co Ltd [1897] AC 22*). Coy is regarded as a person for legal purposes. S124, companies are given the powers of a natural person. 1. It can sue & be sued in its own name, 2. a coy only ceases to exist when it is deregistered, or struck off the register of companies maintained by ASIC, 3. Members may own shares in the company but that does not confer on them a proprietary interest in the assets of the coy (*Macaura v Northern Assurance Co Ltd, 1925 AC 619*), 4. Enter into contracts & incur liabilities in its name, 5. Shareholders are not allowed then to fraudulently apply the coy's property for their own benefit (*Macleod v R (2003) 214 CLR 230*), 6. The doctrine of separate legal entity facilitates ltd liability.

Corporate Veil: it exists once a coy is registered & it separates the coy from the people who formed it. Usually its outsiders who wish to lift/pierce the corporate veil in order to gain access to assets. It can be lifted by either statutory provision or applying general law principles. Statue eg: Insolvent trading, ss 588G-588M, where coy continues to trade even though there are reasonable grounds for suspecting that it wouldn't be able to pay its debt, Uncommercial Transaction ss 588FB- 588FF.

General Law Eg: other instances where the corporate veil is pierced arise where there is no relevant statutory provision but, court has decide to lift the veil *Re Darby [1911 1KB] 95* (Issue: liquidator claiming for secret profit made by director/promoter's "dummy" company), *Gilford Motor Ltd V Home (1933) Ch 935* [Issue: Avoidance of existing legal obligation by setting up a new company to run business], *Walker v Hungerfords (1987) 49 SASR 93* (Issue: Action for compensation re negligence of accountants in preparation of partnership and individual tax returns). Australian courts have always shown a reluctance to lift the veil. In the absence of a clear case of fraud, the Australian courts seem unlikely to lift the veil particularly where it would result in the imposition of an obligation, rather than the conferring of an advantage.

Replaceable Rules: Corporations Act contains a set of rules, called replaceable rules that govern the internal administration and management of companies. The replaceable rules, located throughout the Corporations Act, apply to companies formed after July 1998 and those companies formed before that date which have repealed their constitutions: s135(1)(a)(i) & (ii), A coy may be formed with a constitution that replaces or modifies any or all of the RR s135(2).

Constitution: a very important business planning rule, which enables various stakeholders to personalize the company's structure to suit their practical needs. Not all of the replaceable rules may be appropriate for the new company. Constitutions will be adopted in the following situations:

A coy with different classes of shares with different voting rights, an appropriate partnership where partners transfer an existing business to a company but intend to take an active part in its management, a foreign company, A company that intends to or has issued partly paid share.

Effects of the Constitution and replaceable Rules: S140(1) the constitution & any RR that apply to the coy are to ve effect as a contract. This contract is between each member & company, the company & each director & company secretary & the members themselves. The contract only exists because CA states that the constitution & RR bind the parties as if they have entered into

the contract. Cases have considered whether rules or by-laws made pursuant to, or referred to in, the company's constitution also form part of this statutory contract so that they can be enforced by or against a member (*Wilcox V Kogarah Golf Club (1995) 14 ACLC 421*).

Alteration of Constitution & RR: s136(2) A company has power to alter its constitution. It includes insertion and deletion of provisions as well as amendments. Any alteration has to be by special resolution, i.e. approved by 75% majority of members who are entitled to and cast a vote on the resolution s9. s135 provides that a special resolution making any alteration to a constitution comes into effect on the date the resolution is passed or any later date specified in or determined according to the resolution. s135 (2) provides that the replaceable rules can be displaced or modified if the company adopts a constitution that has the effect of displacing or modifying a particular replaceable rule. Both statutory and general law limits to alteration of these rules.

Types of Companies: 1) Proprietary Companies- s 113 (1), (3) a company must have no more than 50 non-employee shareholders, have different financial reporting obligations depending on whether they are small proprietary or large proprietary s45A, must not engage in any activity that would require disclosure to investors under ch6D except for an offer of its shares, s112 limited by shares not by guarantee, ss148-149 must have Pty as a part of its name, s45a (2)-(4) small Proprietary: \$25 million of opening revenue, \$12.5 million of assets, less than 50 employees, must have one director, s165 cannot engage in any public fund raising, do not require secretary, have lack of capital, uncertainty, companies which do not come under this category are large proprietary company.

Public Companies: s9, A public company is any company that is not a proprietary company, not required to have share capital, may be ltd by guarantee, s113 (3) issue disclosure document inviting the public to subscribe any share, s148 (2) at least 3 director, more capital, transferability of shares, scope of expansion. (details in s45A)

Corporate regulation, governance and management ASIC's Function: to register the companies ASIC Act s19, 20, gather & disseminate information about companies, educate companies & individuals about law, notify the corporations Act in certain circumstances, Investigate the breach of law and register company auditors and liquidators, **Powers:** to exempt compliance with the CA, ASIC Act s11 (4) ASIC has power to whatever is necessary for or in connection with, or reasonably incidental to, the performance of the functions,