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SEPARATE LEGAL ENTITY DOCTRINE

General principle

Salomon v Salomon: sole shareholder in secured loan w/h co → co treated separately from controller → entitled to the repay (P45/P4)

Examples of application

→ Co's property not the property of participants

Macaura v Northern Assurance: not transfer insurance of co + not owner of timber → could not recover insurance on burnt timber (P47/P4)

→ Enter into employment contract with participants (e.g. shareholder)

Lee v Lee's Air Farming: two hats: controller+employee → entitled to benefits under both (P47/P4)

CORPORATION (P74-77/P8)

Features of companies

Advantages	Disadvantages
<ul style="list-style-type: none">• Can have >20 members (partnership has <20 member restriction S115)• Limited liability for members• Capital raising• Company law---reduce cost for participants, protect shareholders• Flexibility (setting up, internal governance rules)• Perpetual succession (till winding up)• Can be traded (e.g. shares)	<ul style="list-style-type: none">• Establishment and admin costs• Disclosure of information• Public law obligations: civil penalties, criminal sanctions

Registering companies

S117 procedure

- * Lodging application with ASIC
- * Contents of application
- * Copy of constitution (for public co)
- * Prescribed form
- * Consents and agreements

S148 co. names

PUBLIC VS PROPRIETARY (P81/P9)

To change co type:

1. Special resolution
2. Comply w/h various registration requirements (P83/P10)

		Public	Proprietary
Types of companies S112	Limited by shares s9	Limited by shares s9	
	Unlimited with share capital	Unlimited with share capital	
	Limited by guarantee <ul style="list-style-type: none"> • No aim for profit • Own property and enjoy limited liability &perpetual succession 		
	No liability S112(2) <ul style="list-style-type: none"> • S112(2): no statutory/contractual right to recover unpaid calls 		
General features (P81/P10)	≥1 member	≤50 members (non-employee) S113 (1)	
	≥3 directors S201A (2) <ul style="list-style-type: none"> • ≥2 ordinarily reside in AU 	≥1 directors S201A (1) ordinarily reside in AU	
	≥1 secretary S204A(2)	secretary not required S204A(1)	
	LTD behind its name S148 (2)	PTY LTD behind its name S148 (5)	
		Small (satisfy 2 of the 3) S45A(2)	Large(satisfy 2 of the 3) S45A(3)
		-Gross operating revenue <25M -Gross assets<12.5 M -<50 employees	-Gross operating revenue ≥25M -Gross assets≥12.5 M -≥50 employees
Replaceable rules		don't apply to single director pty	S135(1)
Constitution	Notice ASIC when amending or repealing constitution S136(5)	apply to public co. only	
	entrenching clause S136(3) (P103/P12)	applies	applies
Share issue	to the public	can issue share to the public implied by S113(3) Must prepare PDS unless excluded in S708	cannot issue shares to the public S113(3) cannot prepare PDS
	Pre-emption		Pre-emption RR254D(1)

	dividend rights of different classes	S254W(1) each class of shares has same dividend rights unless provided in (a) constitution (b) special resolution		RR S254W(2) director may pay dividends as they see fit (subject to terms of issue)
	lodge notice with ASIC regarding VCR	S246F(3) must lodge with ASIC		
		at least once every calendar year and within 5 months at end of financial year S250N		
	Proxy	mandatory shareholder right S249X		replaceable shareholder right S249X
	Voting rights	listed	unlisted	-show of hands: one vote -on poll, one vote per share RR250E
		generally 'one share one vote' ASX listing rules	-show of hands: one vote -on poll, one vote per share RR250E	
	Calling member's meeting	single director can always call (despite anything in the constitution) S249CA	single director may call RRS249C	single director may call RR249C
General meeting	notice	28 days in advance(cannot be reduced) S249HA(1)	21 days in advance S249H(1) (can be reduced except for appointment or removal of director or auditor S249H(3))	21 days in advance S249H(1)
	resolution without GM			(more than one member) if all members entitled to vote sign a document containing a statement that they are in favour of the resolution set out S249A(2)
	appointment of directors by directors	can appoint S201H(1) confirmation resolution by next AGM S201H(3)		can appoint S201H(1) confirmation resolution within 2 months S201H(2)
	period of appointment	listed	unlisted	specified in constitution
		≤3 years ASX listing rule	specified in constitution	