

Overview & Regulatory Framework

What is a company?

- An artificial that is recognized by the law as a legal person with same rights and liabilities
- Separate from shareholders (members), directors, managers and employees.
- Can raise capital
- Limited liability for shareholders/ transferability
- Can be both a proprietary (private) or a public company
- Regulated through ASIC
- Contains a constitution but can be replaced by ASIC rules
- ASX regulates the listed companies

Features

- Shareholders:

Provide capital in the form of shares

Ability to elect directors

Has ownership

- Directors

Management “board of directors”

Control company management

Regulators of Company Law

- ASIC (Australian Securities and Investments Commission)
 - This is a government authority that administers the Corporations Act
 - Have the role of registering new companies, licenses investment advisors, educates public and ensures compliance with corporations Act.
- Australian Securities Exchange
 - Operates the main Australian market for trading
 - Listed companies need to comply with ASX listing rules
- Takeovers Panel
 - Replaces the courts as the main forum for resolving disputes about takeovers
 - Ensures that parties would not be slowing up the process through legal preceding
 - People can only take court action after the takeovers panel preceding has finished (and then only by ASIC)
- Financial Reporting Council
 - Aims to ensure that oversight is coherent and effective for the key elements of the financial reporting system.
 - Provide oversight for of the process for setting accounting and auditing standards in Australia.
 - But they do NOT have direct power to set particular standards.

- Australian Accounting Standards Board
 - Developing conceptual framework for the evaluating accounting standards and international standards.
 - Takes into account advice and feedback from FRC

- Auditing & Assurance Standards Board
 - Similar to AASB but focuses on auditing standards

- Companies Auditors and Liquidators Disciplinary Board
 - Disciplinary board which acts upon applications made to it by ASIC in respect of the conduct of registered auditors and liquidator.
 - Hearings are made with majority of non-accountants to independence
 - Power to ensure monetary penalties or cancelation/ suspension of registration

- Corporations and Markets Advisory Committee
 - Primary function was to advice and make recommendations to the government on any matter connected with the operation, administration and reform of corporations legislation as well as proposals dealing with financial markets, products and services

- Parliamentary Joint Committee on Corporations and Financial Services
 - To add additional level of parliamentary supervision over the Corporations Act Scheme.
 - Five members from house of representatives, five from senate and the treasurer overlooks the committee

Characteristics of a company

A company comes into existence as a body corporate at the beginning of the day on which it is registered. The shareholders and the members own shares and directors control management of the company.

Effects of registration

S124: the legal capacity and powers of a company include the capacity and power of an individual and a body corporate.

This includes power to acquire and dispose of property, and the right to sue. The company has an unlimited life as long as it is registered.

Body corporate: an incorporated legal entity created and recognised by the law, an artificial legal person as opposed to an individual (natural person).

Separate legal entity concept

Separate nature of a company is illustrated by the fact that a company may sue and be sued by its own members. Also the company owns its property in its own right distinct from the property of its shareholders or members (they only own shares in the company).

Salomon V A Salmon

Main case for company as a separate legal entity

- Mr. Salomon was the sole proprietor
- He turned the company into a limited company (incorporating it), which required 7 shareholders (wife and 5 children) to Salmon & Co Ltd
- Company's business was badly affected by strikes
- Company liquidated, not enough assets to cover debts including creditors and employees
- Unsecured creditors argued that Salomon and his company were in essence the same person and he should be liable for the debts of the company
- House of Lords said the Act required 7 members but didn't give specifics about them
- Hence Salomon had incorporated the company properly, all his family knew what he was doing and there was no fraud in the valuing and therefore no basis for holding Salomon personally liable
- Court said: **"the company is at law a different person altogether from the (shareholders)"**
- Case confirmed that the separate legal-entity principle applied even when in reality a company was a one-man band.
- The owner of such a business can use the separate corporate personality principle to shield themselves from liability

Lee V Lee's Air Farming – application of Salmon Case (company separate from legal entity)

- L owned 2999 of 3000 shares (other was by solicitor)
- Lee was the managing director of the company and also an employee under works compensation insurance
- He died whilst working, wife wants insurance claim
- Issue: can be an employee of a 'one-man' company, for insurance
- YES, owner can be employee, just like Salmon
- Lee is separate from Lee the company