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TOPIC 1: REGULATORY FRAMEWORK

INTRODUCTION

- Why is company law important?
 - o What is company law?
 - The regulation of corporations and how they interact with stakeholders
 - How they are formed, governed, what their powers are, how they enter into legal relations, how they make decisions and how they are terminated
 - o Companies overwhelmingly used as vehicle of choice for investment and business
 - o More than 2 million companies in Australia
- History
 - o England (pp 5-7)
 - 15th Century: Corporate Aggregates created by Royal Charter
 - 1688: Revolution – companies created by Private Acts of Parliament
 - NB: Companies can still be created by Acts of Parliament (e.g. *Deakin University Act 1974* (Vic))
 - 17th century: Joint Stock Companies:
 - Unincorporated companies with transferable shares (allowed trading)
 - *Bubble Act 1720* (UK): Restricted transfer of shares to formally incorporated bodies
 - 1825: *Bubble Act* repealed
 - 1844: Incorporation by Registration
 - No limited liability
 - *Limited Liability Act 1855*
 - o Colonial Australia
 - *Companies Act 1862* (UK): Adopted by Australia
 - Late 19th century: Mining boom led to no liability companies and compulsory financial reporting requirements
 - 1901 Federation (see below)
 - o Modern developments (pp 8-9):
 - 1961: Cooperative regime: States enacted uniform legislation but in time there were variations
 - *Companies Act 1981* (Cth): States enacted a Companies Code uniform with this Act
 - *NSW v Cth 1990 – Corporations Act 1989* (Cth)
 - Cth tried to regulate incorporation using s 51(xx) – corporations power
 - o ... make laws with respect to foreign corporations, and trading or financial corporations formed within the limited of the Commonwealth”

- Unsuccessful as the Cth only has power over companies already formed
- 2000: States referred power to Cth under s 51(xxxvii) – referral power
 - Must renew every 5 years
- *Corporations Act 2001* (Cth) commenced 15th July 2001

REGULATORS

ASIC (PP 10-14):

- Cth agency
- Legislative authority:
 - *ASIC Act 2001* (Cth)
 - *Corporations Act 2001* (Cth)
- Most important regulator
- Key role is to administer and enforce the *Corporations Act*
 - Registers companies
 - Maintains national database of companies
 - Exempts / modifies classes of people that don't have to comply with certain parts of the Act (policy function)
 - Educatory function
 - Investigates breaches of the *Corporations Act*
 - Instigate civil proceedings and criminal prosecutions
 - Advises ministers on necessary changes to the Act

ASX:

- A public company that runs the ASX and is listed on its own stock market
- Ensures orderly financial markets
- Public companies that 'list' on the stock exchange 'contract' with ASX that they will comply with Listing Rules
 - Continuous disclosure
 - Supported by the *Corporations Act*
- 2000 listed companies

TAKEOVERS PANEL

- Takes the position of a court if there is a takeover – i.e. resolves disputes
- Peer review body with at least 5 members
- Power to declare “unacceptable circumstances”

SOURCES OF REGULATION

- Legislation (esp *Corporations Act* and *ASIC Act*)
- Case law
- Company constitutions

WHAT IS A COMPANY?

CONCEPTS

- Separate legal entity
 - o Obligations and liabilities are its own, not that of its shareholders or directors
 - o Can sue and be sued
 - o Property is not the property of its participants
 - o Can contract with its participants
- Limited liability (p 30)
 - o Liability of shareholders limited to the amount unpaid on shares
- Perpetual succession

DEFINITION

- Section 57A: Company registered under the Act or its predecessors
- Includes any body corporate formed under other legislation and unincorporated bodies that may sue and be sued, or hold property in the name of an office holder
 - o Body corporate is any artificial legal person (type of corporation s 57A)

PARTICIPANTS

- Shareholders contribute capital by paying issue price on shares
- Directors control management of the company's business