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WHAT IS A COMPANY

A company is an artificial person, intangible, created by or under law with a discrete legal entity, perpetual succession and a common seal. It is not affected by the death, insanity or insolvency of an individual member. Company created by registration is type of corporation.

See s 9 the statutory definition: **Company** means a company registered under *this Corporations Act 2001 (Cth)*

And s 57A for the statutory definition:

- **A Corporation** includes a company and any body corporate – has wider meaning than just company
- What is a corporation or body corporate?
  - Natural person and
  - Artificial entities e.g. Corporations created by certain methods

The regulator/Government - Australian Securities and Investments Commission (ASIC)

Companies are registered at the ASIC in accordance with the requirements of the *Corporations Act 2001 (Cth).*

ASIC performs both administrative and regulatory functions. It has sole responsibility for the national regulation of companies. Accordingly, it is known as the ‘Corporations Law watchdog’.

Role is to - Register companies- Gather information about companies- Educate companies- Investigate breaches

Powers of ASIC is to investigate and enforce corporations legislation:

<table>
<thead>
<tr>
<th>General powers of investigation;</th>
<th>Result of investigation.</th>
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<tr>
<td>- s 19 ASIC Act and s 30 ASIC Act (AA) notices;</td>
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<td>- s 35 ASIC Act warrant to seize books.</td>
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<td></td>
<td>- conduct hearings under s 51 AA</td>
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Fundamental Principles of a company

Legal Personality – 01 Legal Concept

A company once registered is a separate legal entity from its members and those that manage its operations

- a company is clearly recognized as a legal person- that is, a person given its own legal status under the law – which means that it can sue and be sued in its own name. This doctrine is known as “legal personality”

- Another feature of legal personality is that the company continues to exist despite changes to its shareholders. This is known as the doctrine of “perpetual succession”.

These principles originated in the case of *Salomon v Salomon*, which established the fundamental principle that a company is a separate legal entity, distinct from its members and directors.

*Salomon v A Salomon & Co Ltd (1897) – Separation of ownership in entity.*

Consequences of the separate legal identity of the company (‘the corporate veil’):

1. Company’s assets and liabilities are those of the company, not its members
2. Companies can contract with their members, directors and outsiders (and vice versa); and
3. Companies can commit torts and crimes.

Separate legal Entity/ Cooperate Veil

- Expression that lawyers use to describe the legal rules that keep participants (members, officers) separate from the company in a legal sense
- “Corporate veil” reflects and results from company’s separate legal personality

What is the effect of the corporate veil?

- Stops the law from “seeing” the participants that make up the company e.g. The owners and the operators
- Means that the law cannot look through the veil of incorporation and say that the company’s obligations, liabilities, rights or property are obligations, liabilities, rights or property of the participants