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General Classification & Requirements

Issue: TYPES OF ENTITIES

1. **S114**: all company must have at least 1 member
2. **S124**: Company's capacity to enter contracts; issue shares; hold property etc.
3. Separate Legal entity (General law capacity)
 - a. **Salomon v. Salomon (1897)** → S is secured creditor of S company
 - b. **Lee v. Lee** → Mr. Lee is both controller and its employee
4. Limited Liabilities
 - a. **S516**: member's liability is limited to the amount (if any) unpaid on their shares;
 - b. **S254M**: (Partly paid shares) shareholders are obliged to contribute further if a "call" is made. If not, shares may be forfeited. (pay the unpaid)
5. Liquidation order: secured creditors → priority shares → unsecured → ordinary shareholders

Proprietary Company (1-50)	Public Company (1-∞) Subject to diff. rules
S112: Pty companies can be "company limited by shares" or "unlimited company with share capital"	S112: any company that is not incorporated as Pty Ltd is Public company (can be all types)
S113: No more than 50 non-employee members	
S201A(1): must have 1+ directors	S201A(2): must have 3+ directors
S204(1): no secretary needed	S204A: requires at least 1 secretary
Ch6D: no fundraising activities using PDS	S201E: special rules apply to the appointment of directors—separate resolution in respect of each UNLESS members consent unanimously [NOT RR]
S45A: small or large proprietary Large if satisfies two of the followings: <ul style="list-style-type: none"> Gross revenue > 25 million Gross assets > 12.5 million Employees > 50 S148(2): always include Pty Ltd in the name S254W(2)[RR]: subject to terms on which shares are issue, directors may pay dividends as they see fit	S250N(2): required to hold annual general meetings S203D; 203E: restrictions applied to the removal of directors S136(5): must lodge with ASIC of SR within 14 days S254W(1): each share in a class of share have same dividends rights, unless: <ul style="list-style-type: none"> Constitution provide diff. dividends rights Diff. dividends rights are provided by SR S292: Required to lodge financial reports with ASIC S298(1): Directors report; S298(2): requirements of the report
Company types: <ul style="list-style-type: none"> Limited by shares Unlimited S9: Ltd → Company formed based on having the liability of its members limited to the amount (if any) unpaid on shares respectively held by them.	Company types: <ul style="list-style-type: none"> Company limited by guarantee (no share capitals) No liability company (only mining co.) Company limited by shares Unlimited company with share capital
S298 (3): small pty company doesn't need to comply with s298(1) if:	Chapter 2E: Restrictions on transaction (& financial benefit) with related parties <ul style="list-style-type: none"> Required members' approval Only applies to PUBLIC COMPANY

<ul style="list-style-type: none"> It is preparing financial statements for that year in response to a shareholder direction under s293; and The direction specified that a directors' report need not be prepared 	<p>***Secretaries→ S127 can sign documents or witness the affixing of the company's seal</p> <ul style="list-style-type: none"> Record-keeping; maintenance Ensure co. meets its obligations
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6. Corporate Groups

a. **S46: Holding Company & Subsidiaries** (satisfy any point→ relationship ✓)

- H controls the composition of subsidiary's board
- H is able to cast or control the casting of more than 50% of votes at GM
- H holds more than 50% of the issued share capital of S
- S is a S of another S of the H

S47: Control of a body corporate's board & **S48:** Disregarded matters

b. **S50AA: Controlling vs. Controlled Entities** (Broader definition than a)

- (1):** "an entity controls a 2nd entity if the 1st entity has capacity to determine the outcome of decisions about the 2nd entity's financial or operating policies"
- (2):** (a) practical influence; (b) practice or pattern of behavior affecting 2nd entity
- (3):** Joint capacity→ not controlling
- (4):** Has legal obligation to control for benefit of someone other than 1st entity member→ not controlling

Types of co.	Disclosing entity	Company limited by guaranteed (revenue > \$1m)	Company limited by guaranteed (revenue < \$1m)	Small company limited by guarantee	Other public co.	Large Pty Ltd	Small Pty LTd
Annual Financial Statements and Directors Reports	✓	✓	✓	If requested by members/ ASIC	✓	✓	If requested by members/ ASIC
Half Year Financial Reports	✓	X	X (but must be reviewed)	X	X	X	X
Audit	✓	✓	X	If requested by members/ ASIC	✓	✓	If requested by members/ ASIC