

TOPIC 2 – REGISTRATION AND ITS EFFECTS

S57A - Meaning of corporation

- (1) Subject to this section, in this Act, **corporation** includes:
- (a) a company; and
 - (b) any body corporate (whether incorporated in this jurisdiction or elsewhere); and
 - (c) an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose.
- (2) Neither of the following is a **corporation** :
- (a) an exempt public authority;
 - (b) a corporation sole.
- (3) To avoid doubt, an Aboriginal and Torres Strait Islander corporation is taken to be a **corporation** for the purposes of this Act.

Creating the separate legal entity – registration, corporate powers and limited liability

Sections 117-124

Section 117

Applying for registration

Lodging application

- (1) To register a company, a person must lodge an application with ASIC.

Note: For the types of companies that can be registered, see [section 112](#).

Contents of the application

- (2) The application must state the following:
- (a) the type of company that is proposed to be registered under this Act;
 - (b) the company's proposed name (unless the ACN is to be used in its name);
 - (c) the name and address of each person who consents to become a member;
 - (d) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a [director](#);
 - (e) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a company secretary;
 - (f) the address of each person who consents in writing to become a [director](#) or company secretary;
 - (g) the address of the company's proposed [registered office](#);
 - (h) for a public company--the proposed opening hours of its [registered office](#) (if they are not the standard opening hours);
 - (j) the address of the company's proposed principal place of business (if it is not the address of the proposed [registered office](#));
 - (k) for a company [limited](#) by shares or an unlimited company--the following:
 - (i) the number and class of shares each member agrees in writing to take up;
 - (ii) the amount (if any) each member agrees in writing to pay for each share;
 - (ia) whether the shares each member agrees in writing to take up will be fully paid on registration;
 - (iii) if that amount is not to be paid in full on registration--the amount (if any) each member agrees in writing to be unpaid on each share;
 - (iv) whether or not the shares each member agrees in writing to take up will be beneficially owned by the member on registration;
 - (l) for a public company that is [limited](#) by shares or is an unlimited company, if shares will be issued for non-cash consideration--the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the application;
 - (m) for a company [limited](#) by guarantee--the proposed amount of the guarantee that each member agrees to in writing;
 - (ma) whether or not, on registration, the company will have an ultimate holding company;
 - (mb) if, on registration, the company will have an ultimate holding company--the following:
 - (i) the name of the ultimate holding company;
 - (ii) if the ultimate holding company is registered in Australia--its ABN, ACN or ARBN;
 - (iii) if the ultimate holding company is not registered in Australia--the place at which it was incorporated or formed;
 - (n) the State or Territory in this jurisdiction in which the company is to be taken to be registered.

(3) If the company is to be a public company and is to have a constitution on registration, a copy of the constitution must be lodged with the application.

(4) The application must be in the prescribed form.

(5) An applicant must have the consents and agreements referred to in subsection (2) when the application is lodged. After the company is registered, the applicant must give the consents and agreements to the company. The company must keep the consents and agreements.

(6) An offence based on subsection (5) is an offence of strict liability.

Section 118

ASIC gives company ACN, registers company and issues certificate

Registration

(1) If an application is lodged under section 117, ASIC may:

(a) give the company an ACN; and

(b) register the company; and

(c) issue a certificate that states:

(i) the company's name; and

(ii) the company's ACN; and

(iii) the company's type; and

(iv) that the company is registered as a company under this Act; and

(v) the State or Territory in this jurisdiction in which the company is taken to be registered; and

(vi) the date of registration.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

ASIC must keep record of registration

(2) ASIC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with ASIC.

Section 119 - Company comes into existence on registration

A company comes into existence as a body corporate at the beginning of the day on which it is registered. The company's name is the name specified in the certificate of registration.

Note: The company remains in existence until it is deregistered (see Chapter 5A).

Section 119A - Jurisdiction of incorporation and jurisdiction of registration

Jurisdiction in which company incorporated

(1) A company is incorporated in this jurisdiction.

Jurisdiction of registration

(2) A company is taken to be registered in:

(a) the State or Territory specified:

(i) in the application for the company's registration under paragraph 117(2)(n) (registration of company under this Part); or

(ii) in the application for the company's registration under paragraph 601BC(2)(o) (registration of registrable body as company under Part 5B.1); or

(b) the State or Territory in which the company is taken to be registered under paragraph 5H(4)(b) (registration of body as company on basis of State or Territory law).

(3) The State or Territory in which a company is taken to be registered changes to the State or Territory in this jurisdiction nominated by the company if:

(a) either:

(i) the relevant Minister of the State or Territory in which the company is taken to be registered before the change approves the change; or

(ii) the State in which the company is taken to be registered ceases to be a referring State; and

(b) the procedural requirements specified in the regulations are satisfied.

(4) A company continues to be registered under this Act even if the State in which the company is taken to be registered ceases to be a referring State.