

BLAW20001: Corporate Law Exam Notes

COMPANY STRUCTURE

Proprietary (Private) Company (Pty Ltd)	S9: Public Company (Ltd)
<ul style="list-style-type: none"> <input type="checkbox"/> Minimum 1 shareholder <input type="checkbox"/> S201A(1) Must have 1 or more directors - with 1 in Aus <input type="checkbox"/> S113(3) no more than 50 non-employee shareholders <input type="checkbox"/> S204A(1) Optional secretary - s204A(1) <input type="checkbox"/> No fundraising activity - Ch 6D <p>S249A Resolutions may be deemed to have been passed even though no meeting was held, provided <u>all shareholders sign a document</u> stating they support the resolution.</p> <p>Limited by shares Unlimited by share capital - s112</p> <p>S135(1) – RR do not apply to Pty while the same person is both sole director and sole shareholder.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Minimum 1 shareholder <input type="checkbox"/> S201A(2) 3 directors (not all directors are shareholders) - 2 in Aus <input type="checkbox"/> S250N Required to have AGM <input type="checkbox"/> Lodge financial report – s292 <input type="checkbox"/> Must have secretary - s204A(2) <p>Special rules apply to the appointment of public company directors s201E</p> <p>Limited by shares Unlimited by share capital Limited by guarantee No liability</p>

TYPES OF COMPANY

Incorporate entities	Unincorporated entities
<p>Corporations formed by ASIC Separate legal persons Limited liability Corporate capacity - able to expand business Company has perpetual succession</p> <p>Disadvantages: Expensive to start up Strict company law Formalities, lots of compliance No privacy</p>	<p>Clubs & societies Members do not aim to make a profit and distribute it</p> <p>No legal personality separate from their participants. Do not have benefit of limited liability</p> <p>E.g. Sole trader, general/limited partnership</p>

In liquidation recovery priorities:

1. Secured creditors
2. Priority creditors
3. Unsecured creditors
4. Shareholders

Advantages of company: (s115 - more than 20 members), limited liability, raise capital, different tax treatment

Limited by shares: s9 a company formed on the principle of having liability of its members limited to the amount unpaid on the shares respectively held by them – s516.

Limited by guarantee: liability limited to the respective amounts of the members guarantees to contribute to the property of the company.

Pty Companies

S45A(1) Small if satisfy at least 2 of the 3 tests: (vs Large - s45A(3))

- consolidated gross operating revenue < \$25 million
- consolidated gross assets < \$12.5 million
- Company & entities it controls < 50 employees

Holding company - s 46 (Satisfy 1 or more)

- Controls the composition of the subsidiary's board - by exercising a power
- Control more than one-half of the votes at a general meeting
- Holds more than one-half of the issued share capital (excluding non-voting shares)
- Subsidiary is a subsidiary of another subsidiary of the holding company.

How to create a company (required procedure)?

Lodge an application form with ASIC. S117

- ☐ Proprietary / Public
- ☐ Who will be the members? (At least one s 114) – must consent in writing s 231
- ☐ Directors s 201A
- ☐ Secretary s 204A
- ☐ Address to be company's registered office s 121 RR
- ☐ Name of the company - s148

Separate Legal Entity (Page 46):

- As in the case of Saloman v Saloman & Co Ltd, a company is a separate legal entity from its controllers.
- Company's property is not the property of its participants, Macaure v Northern Assurance Co Ltd
- Company can contract with its participants, Lee v Lee's Air Farming Ltd.

CONSTITUTION

S135(2) RRs apply unless they are displaced or modified by a constitution.

S136(1)(b) Adopt a constitution any time after registration by special resolution (s9 75% votes of those who are present)

S136(2) provides that amending company's constitution requires special resolution:s9

S136(3) Entrenching a rule - extra requirements for changing a rule (pg 103)

DIRECTORS

Requirements to be Director – S.201D Consents to act as director, S201B(1) At least 18 and a human, S201B(2) Not disqualified, bankrupt. (Page 718)

Managing Director - S 201J Directors of company may appoint 1 or more as managing directors.

s198C Revoke MD - s203F (assignment)

CEO (managing director), Executive Directors are both directors and full-time employee. Non-executive directors are not involved in full-time management. Attend meetings of the board. P203-204

S202C Director is to be paid any remuneration for being a director that the company determines by resolution. Also may other travelling expenses in connection with business.

DIRECTORS' DUTIES

Overlap between general law and statutory duties. Statutory duties enforced by ASIC

General law duties - the company.

Standard Chartered Bank v Antico - Duties owed by directors includes de facto and shadow.

Loyalty and good faith (don't be evil)	Care and diligence (don't be lazy)
Duty to: <ul style="list-style-type: none"> ▪ Retain discretions ▪ Avoid conflicts of interest → s191 ▪ Act in good faith in the interests of the company → s181 ▪ Use powers for a proper purpose → s181 <p style="text-align: center;">(not to make improper use of information/position - s182 & 183)</p>	Duty to act with reasonable care and diligence - s180(1) Contract between director and company - general law DEFENSE: Business Judgment rule 180(2)

Who owes the duties?

General law duties	Statutory duties
<ul style="list-style-type: none"> <input type="checkbox"/> Directors <input type="checkbox"/> Senior executive officers (like directors can be regarded as fiduciaries) 	<ul style="list-style-type: none"> <input type="checkbox"/> Directors: s9 <input type="checkbox"/> Other company officers (secretary, participates in decision making) <p>Enforced by ASIC</p>

Fiduciary = person expected to act in the interest of another; cannot use knowledge to benefit themselves rather than the person acting on behalf.

Duties may be owed to an individual members. ***Bunninghausen v Glavanics***

Reliant on information*