Corporations Law

Contents

Definitions

Powers of directors

198A Powers of directors (*replaceable rule—see section 135*)

(1) The business of a company is to be managed by or under the direction of the directors.

Note: See section 198E for special rules about the powers of directors who are the single director/shareholder of proprietary companies.

(2) The directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

198E Single director/shareholder proprietary companies

Powers of director

(1) The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director.

Note: For example, the director may issue shares, borrow money and issue debentures.

Replaceable rules

141 Table of replaceable rules

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Subsidiaries

46 What is a subsidiary

A body corporate (in this section called the ***first body***) is a subsidiary of another body corporate if, and only if:

(a) the other body:

(i) controls the composition of the first body's board; or

> Means legal control, not practical control: *Mount Edon*
> See s 47.

(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or

> Control means legally enforceable power.
> Open proxies constitute control: *Bluebird*

(iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first body is a subsidiary of a subsidiary of the other body.

47 Control of a body corporate's board

Without limiting by implication the circumstances in which the composition of a body corporate's board is taken to be controlled by another body corporate, the composition of the board is taken to be so controlled if the other body, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the first-mentioned body, and, for the purposes of this Division, the other body is taken to have power to make such an appointment if:

(a) a person cannot be appointed as a director of the first-mentioned body without the exercise by the other body of such a power in the person's favour; or

(b) a person's appointment as a director of the first-mentioned body follows necessarily from the person being a director or other officer of the other body.

48 Matters to be disregarded

(1) This section applies for the purposes of determining whether a body corporate (in this section called the ***first body***) is a subsidiary of another body corporate.

(2) Any shares held, or power exercisable, by the other body in a fiduciary capacity are treated as not held or exercisable by it.

(3) Subject to subsections (4) and (5), any shares held, or power exercisable:

(a) by a person as a nominee for the other body (except where the other body is concerned only in a fiduciary capacity); or

(b) by, or by a nominee for, a subsidiary of the other body (not being a subsidiary that is concerned only in a fiduciary capacity);

are treated as held or exercisable by the other body.

(4) Any shares held, or power exercisable, by a person by virtue of the provisions of debentures of the first body, or of a trust deed for securing an issue of such debentures, are to be disregarded.

(5) Any shares held, or power exercisable, otherwise than as mentioned in subsection (4), by, or by a nominee for, the other body or a subsidiary of it are to be treated as not held or exercisable by the other body if:

(a) the ordinary business of the other body or that subsidiary, as the case may be, includes lending money; and

(b) the shares are held, or the power is exercisable, only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, not being a transaction entered into with an associate of the other body, or of that subsidiary, as the case may be.

Related bodies corporate

50 Related bodies corporate

Where a body corporate is:

(a) a holding company of another body corporate; or

(b) a subsidiary of another body corporate; or

(c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.