

Wk3 Pre-incorporation contracts, Promoters and Directors

Directors - Types

MD: s 201J, s 198C

CEO

Managing the co's daily buss

Replaceable rule: CEO can appoint more than one to manage the buss

S198C: power exercised by CEO

Large co: CEO, in charge of the senior directors who manage the co

Chair of directors: s 249U, s 248E

- Purpose of chairmanship:

Exercising procedural control over a meeting: nomination of speakers, putting questions and declaring resolutions, general buss purpose.

- Role of the chairmanship:

Corporate governance responsibilities.

Most imp't role than any other director: selecting matter to be brought to the board, policy, promotion of position.

Ensuring BOD are properly performing and meets its supervisory duties.

Alternate director:

S201K: replaceable rule

A director with the approval of other directors appoints an alternate to exercise some or all of the director's powers, so it allows the replacement of the director.

ASIC must be given notice of the appointment.

S201K:

Duties: Where an alternate director exercise the power of the director it has the same effectiveness as the original director; When the director is present at the board meeting, the alternate director has no legal status.

Liabilities: Alternate directors are within the same definition as director and is subject to the same fiduciary and statutory duties (Markwell v CPN), it is not an agent of the appointor (Anaray v Sydney future).

* Alternate director is liable for insolvent trading unless he or she has never been called upon to attend meetings (playcorp v Shaw).

Nominee director

- Directors that are appointed to represent the interests of a particular shareholder or creditor on BOD.
- A holding co has the power to appoint directors to the board of its subsidiary, which is the nominee director of the holding co.

Executive director

Full-time employees that are delegated with significant mgmt and admin functions;

CEO is the top and most senior;

Executive director may include CFO.

Non-executive director

- X directly involved in the day-to-day mgmt
- Part-time, intermittent role in the co that is performed at periodic board meetings and at meetings of board committes of which non-exe directors are members.
- Important roles in board committees and in monitoring the activities of the mgmt team heade by CEO.

Types of non-exes:

- Affiliated: formal / present significant shareholder, director, material buss relationship.
- Independent: X material buss relationship and is independent of mgmt

Independent non-executive directors:

- The majority should be independent in a listed co
- Enhance the effectiveness of the board in monitoring the activities of the buss' mgmt and to avoid conflicts of sensitive interests (Corporate Governance and Recommen).