

Business Associations

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1. Introduction to Business Associations

OVERVIEW

- What is a company
- Who 'owns' the property?
- Who makes decisions about the property will be used? Who gets the benefits of profits?
- Who bears any losses?
- How can ownership of the company be transferred? How does the government regulate all of this?

Purposes of Incorporation

What is a Company

- **Corporation:** an organisational structure that facilitates the raising of finance for business activity from those with capital for investment but no interest or capacity for management of the business.
 - A fictional legal person – an entity recognised in law as a person.
 - It can enter into contracts, sue and be sued, own property, employ agents and employees.
 - A vehicle to pool funding.

Benefits of Incorporation

- Corporate group has perpetual existence;
- Corporation can bring suit against others and its own members;
- Can enter into contracts as distinct from the acts of individual members; Facilitates continuation of management and transferability of shares;
- Limited liability - distinguishes between group liability and the personal liability of individual members.

Who Owns the Property

- A corporation is a person distinct from its members
- Property of the corporation is distinct from the property of its members
- Property of its member cannot be taken in execution for the debt of the corporation and vice versa.

Who Benefits from the Profits

- **Shareholders:** share in the financial gains of the enterprise without having to participate in its management

Who Bears Any Losses

- **Shareholders:** ultimate risk bearers as their financial claims are postponed to those of creditors in winding up.
- **Creditors:** trade creditors, banks and financial institutions
- **Tortious liability claimants:** involuntary creditors

Transfer of ownership

- By sale of shares or assets of the company

Two main types of capital

- Debt - debentures provided by creditors
- Equity – share capital provided by shareholders; shareholders have the residual claim;
- Partly-paid share – doesn't need to be paid in full until called for; including when the company is insolvent, and a liquidator is appointed;

When does a Company Come into Being

- Date of registration with ASIC

