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B. Fundraising

Situations:

- a. If disclosure document was provided **but** securities were not advertised outside of this
 - i. Assess whether disclosure document met requirements (Scaffold A)
- b. If securities were advertised **and** a disclosure document was provided
 - i. Assess whether disclosure document met requirements/ was misleading (Scaffold A)
 - ii. Assess whether the security was allowed to be advertised/ whether it was advertised properly (Scaffold B)
- c. If securities were advertised **but** no disclosure document was provided
 - i. Assess whether a disclosure document was required (Scaffold A)
 - ii. Assess whether the security was allowed to be advertised/ whether it was advertised properly (Scaffold B)

A. Disclosure Requirements

1. Can the Company Raise public capital?

- 1.1. Public company = yes
- 1.2. Proprietary company = no → will be breach if what they are doing falls within Ch 6, unless to employees/existing shareholders (go to **2 & 3**)

2. Is the fundraising an offer of securities for issue?

- 2.1. Is there an offer or invitation?
- 2.2. Does the offer/invitation deal with 'securities'?
- 2.3. Is it 'for issue'?

3. Do any Exemptions Apply?

- 3.1. Divide fundraising into different amounts/ offers and go through exceptions for each (need each parcel of funds to fall within an exception)
- 3.2. Result:
 - a. If no exemption: Disclosure document required. Move to **4**
 - b. If exemption: Disclosure document not required. However, may still be restrictions around advertising. Go to Scaffold B.

4. Has disclosure document been provided?

- 4.1. If yes: Move to **5**
- 4.2. If no: Breach of s 727. Civil penalty provision.

5. Does the disclosure document meet requirements?

- 5.1. Type of document required
- 5.2. Information which must be contained
- 5.3. Must not be misleading

6. Result

- 6.1. If document is incomplete (omission) or misleading – it is prima facie a breach of s 728
- 6.2. Is there any defence available?
- 6.3. Can the deficiency be cured by supplementary/replacement prospectus?
- 6.4. If no to 6.2 + 6.3 → s 728 is breached. Look at consequences.

FUNDRAISING

Is it a Pty (private) or Ltd (public) company?

Private

Does the fundraising require Ch 6D disclosure?

- a. Is there an offer of securities for issue?
- b. Do any exemptions apply?

YES: Was it being offered to employees/shareholders?

Yes: Is fine to fundraise.

No: Is a breach of s 113 to fundraise

Was an adequate disclosure doc made?

IF NO: Separate breach of CA (s 727 if no document, s 728 if incomplete or misleading document)

NO: Is not a breach of the CA to fundraise

Was an adequate disclosure doc made?

IF NO: Breach of CA (s 727 if no document, s 728 if incomplete or misleading document)

Public

Does the fundraising require Ch 6D disclosure?

- a. Is there an offer of securities for issue?
- b. Do any exemptions apply?

Was an adequate disclosure doc made?

IF NO: Breach of CA (s 727 if no document, s 728 if incomplete or misleading document)

A. Director's Duties

