

BUSL301 Final Exam Revision

Lecture 5 – Directors and Management

Who is a directors?

- A company consists of two components or organs:
 - The board of directors; and
 - The members in general meeting
- Directors is defined in s.9 Corporations Act as follows:
 - a) A person who:
 - 1. Is **appointed** to the position of a **director**, or
 - 2. Is **appointed** to the position of an **alternate director** and is acting in that capacity (acting in the position of directors, showing influence on the company's policy, agenda...)
 - b) Unless the contrary intention appears, a person who is not validly appointed is a director if
 - 1. They act in the position of a director ('de facto director') or
 - 2. The directors of the company or body are accustomed to act in accordance with the person's instructions or wishes. ('shadow director') (shows influence over a real director)
- De facto directors (s9 (b)(1))
 - Need not be officially appointed: the test is whether they were acting in the position of a director
 - Substantially influence the management of the company or the conduct of directors
 - (may have resigned: the test is whether the tasks they performed were those normally undertaken by director)
- Alternate directors (s.9 (a)(ii))
 - Is a person appointed to act as a 'fill-in' for a director who for some reason at the time is unable to act as a director.
 - The alternate director is a director only at the time they are called upon to act in the place of the absent director
 - appointed by the shareholders
 - approved by the Board of Directors (section 201 (k) which is a replaceable rule)
 - difference between an alternate director and a de facto director is that alternate director is FORMALLY APPOINTED
- **Shadow director**- can be a person or a company (a company can be a shadow director but not be a director)
 - -exercises a controlling influence over the board of directors but is not appointed himself as a director.

- All directors comprise the Board of Directors. According to **section 198A**- the business of a company should be run and managed under the director of the directors.

Types of directors

- Managing Director

- A M.D. is in charge of managing the company's daily business.
- The replaceable rules allow the directors to appoint one or more of themselves to the office of M.D. : **s 201J**
- A managing director may be conferred with any of the powers that the directors can exercise: **s 198C**

- Chair of Directors

- The chair **exercises procedural control over a meeting (s248E)**
- An individual may be elected by the directors to chair directors' meetings of the company's members (**s249U**)
- **Minutes** must be **signed** by the chair of the meeting or the chair of the next meeting (s 251A(2))
- The chair has a casting vote at directors' meetings: s 248G(2)
- The chairman has the primary responsibility of selecting matters and documents to be brought to the board's attention, for formulating the policy of the board and promoting the position of the company.

- Nominee Directors

- Are often appointed to represent the interests of a particular class or classes of shareholders (ordinary, preference, hybrid).
- Example: employees may be entitled, pursuant to the company constitution, to elect a director to represent them (employee director)
- A subsidiary's directors may be nominees of the holding company.

- Executive directors

- Full time employee of the company and as such owe contractual, common law (fiduciary) and statutory obligations to the company.
- Main role is to take part in the daily management of the company's business.
- Large companies should have at least one executive director