

R.T.R - RELATED PARTY TRANSACTIONS — Chapter 2E (page 299) - determining breach of s 208

Steps	Proof
1. Is it a PUBLIC company OR an entity that the public company controls ? (s 50AA)	Must have "Ltd" — s 208: Public companies must get approval for a RPT: s 208
2. Is there a "financial benefit"?	s 229 (1) - determination (broad interpretation) even if criminal or civil penalties are involved s 229(2) - giving a financial benefit a) indirectly - through 1 or more interposed entities b) informal agreement, oral agreement or one that has no binding force c) one that does not involve paying money s 229 (3) - EXAMPLES
3. Is the financial benefit being given to a related party to the public company ? Determine if they are a related party.	S228(1): An entity that controls a public company (s 50AA: control - an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies) s 228(2): a) directors of the public company b) directors (if any) of an entity that controls the public company c) if the public company is controlled by an entity that is not a body corporate d) spouses s 228 (3) : relatives of s 228(2) a) parents & (b) children s 229 (4): entity controlled by other related parties s 228(5) — RP in the previous 6 months s 228(6) — Entity that believes it will become a Related party 228 (7) — a another entity that also benefits if the RP benefits
4. Do any exceptions in Divisions 2, Part 2E.1 apply?	1. Arm's Length Terms: s 210 Member approval is not needed if the deal is the same deal that would be offered to a stranger, less favourable or the company will benefit. 2. Officer or employee remuneration and reimbursement: s 211 3. Indemnities, exemptions, insurance premiums and payment for legal costs of officers : s 212 4. Small amounts given : s 213 5. given to a closely-held subsidiary: 214 6. to members - equally (does not discriminate unfairly) : s 215 7. Court order: s 216
5. If the exceptions don't apply, did they get shareholder approval?	A public company or one that is controlled by a public company must get member approval from to give financial benefits to a related party: s 208. —> procedure is set out in s 217 to 227 (approval by ordinary resolution) — special requirements to this meeting* not a general meeting.
6. Consequences of the breach	S 209 (1) contravention does not invalidate the contract or transaction (a) nor is the company guilty (b) s 209 (2) the person who makes the transaction if contravenes this subsection (civil penalty) s 209 (3) if there are reasonable grounds to believe there has been dishonesty in the contravention of s 208 - (criminal penalty)

PAYMENT OF DIVIDENDS

DIVIDEND PAYMENTS

1. [RR] s 254U(1): directors may determine that a dividend is payable and fix:

- (a) the amount; and
- (b) the time of payment; and
- (c) the method of payment

This includes the payment of cash, issue of shares, the grant of options and the transfer of assets

BUT must comply with s 254T

2. Directors may **only** pay a dividend when they have satisfied all **3 tests of s 254T(1)**:

The company **must not** pay a dividend **unless**:

- (a) the company's **assets exceed its liabilities** immediately before the dividend is declared and the excess is sufficient of the payment of the dividend.
- (b) the payment of dividend is **fair and reasonable** to the company's shareholders as a **whole** (*Greenhalgh v Argene*) and
- (c) the payment of the dividend does not **materially prejudice** the company's ability to pay its creditors

If the directors are accessories for the company's contravention of s 254T which is a criminal provision → "prohibition": are liable for **criminal penalties**.

Schedule 3 states:

up to 100 penalty units (\$18, 000) and/or up to 2 years in prison

3. The payment of a dividend is a **deemed debt**: considered for the purposes of s 588G(1A)(1).

Therefore will incur **insolvent trading liability** — see director duties table**

4. A payment of dividend is considered to be a reduction of capital: but the requirement of s 254T to be satisfied **doesn't** require shareholder approval under the reduction of capital procedures.

s 254W: — PUBLIC COMPANY — Shares in a public company:

- (1) each shares in a class have the same rights to a dividend **unless**:
 - (a) the company has a constitution and it provides for the shares to have different dividend rights; or
 - (b) different dividend rights are provided for by special resolution of the company.

s 254W(2) — PROPRIETARY COMPANY [RR] — Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

**But are still bound by director duties.

5. If dividends are paid too early, too frequently, too carelessly → carelessness → breach of director duty to act with care and skill : s 180(1). Because a **reasonable** person in their position would not do.

6. Payment of dividends when experiencing financial difficulties or payment to only the directors — contravention of s 181

7. Payment to only directors or someone else is an improper use of position: s 182