

## LECTURE 1: Introductions

### Choice of Form of business:

Benefit of corporate:

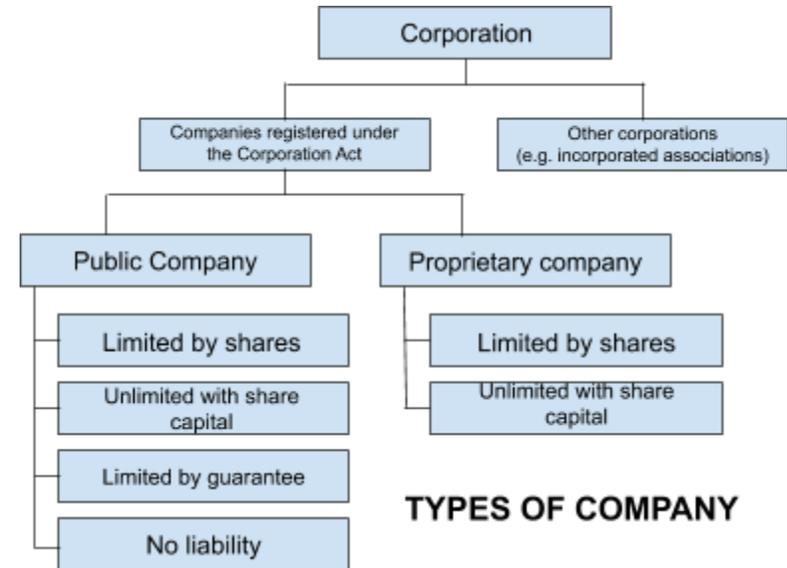
- 1) Limited Liability (**S516**)
- 2) Perpetual succession
- 3) Free transferability of interest
- 4) Corporate law as standard
- 5) Contract, tax consideration

THE SEPARATE ENTITY DOCTRINE	
<b>1. Separate legal entity</b> Separate legal personality, limited liability, legal capacity	<b>Salomon v Salomon</b> Company is separate from its controller. Note: This case is applicable to all limited company both large and small.
<b>2. Company obligations &amp; liabilities are its own</b>	Company limited by shares, a member's liability to pay is limited by the amount (if any) unpaid shares: <b>S516</b>
<b>3. Company can sue and be sued by its own name</b>	Company comes into existence as a body corporate: <b>S119</b>
<b>4. Company's property does not belong to participant</b>	<b>Macaura v Northern Assurance</b> Macaura cannot apply his insurance to his company's timber because he is not the owner of the timber (the company is)
<b>5. Company can contract with its controlling participant</b>	<b>Lee v Lee's Air Farming</b> Company is able to enter to employee contract
<b>6. Perpetual succession</b>	Company life is indefinitely until winding up

**Liquidation hierarchy:** Secured creditors > priority creditor (employee, etc) > unsecured creditor (tax government, etc) > shareholder.

## LECTURE 2: Setting Up Companies, Disclosure Requirements

TYPES OF COMPANY		
<b>Partnership</b>	1. Cannot have > 20 members. Unless certain types of partnership (law firms or accountancy firms) under <i>Corporation Regulation 2001</i> . - Criminal provision 2. Not a separate legal entity 3. No limited liability (unless limited liability partnership)	<b>S115</b>  <b>S115(3)</b>
<b>Proprietary Companies (Pty)</b>	1. Cannot have > 50 members <b>non employee</b> . 2. No fundraising activity 3. One or more directors 4. May be limited by shares or unlimited 5. Registered under <b>S188</b> 6. Share dividend right 7. Minimum shareholder is 1	<b>S113(1)</b> <b>Ch.6D</b> <b>S201A(1)</b> <b>S112</b>  <b>S254W(2)</b>
<b>Small Proprietary</b>	1. Gross operating revenue < \$25 million 2. Gross assets < \$12.5 million 3. Employee < 50	<b>S45A</b>
<b>Large Proprietary</b>	1. Gross operating revenue >= \$25 million 2. Gross assets >= \$12.5 million 3. Employee >= 50	<b>S45A</b>
<b>Public Company</b>	1. Everything other than proprietary companies 2. 3 or more directors (2 resides in Australia) 3. Share dividend rights 4. Can raise funds from public 5. Minimum of 1 shareholder	<b>S112</b> <b>S201A(2)</b> <b>S254W(1)</b> <b>Ch.6D</b> <b>S114</b>
<b>Company limited by shares</b>	Limited liability to the amount of the unpaid shares	<b>S516</b>
<b>Company limited by guarantee</b>	Limited liability to the amount of the guarantee 1. Public company 2. No profit motive (usually a charity company)	<b>S517</b>
<b>Unlimited Company</b>	Only apply to mining company	<b>S518</b>
<b>Changing</b>	1. Must pass special resolution (75%)	<b>Pt.2B.7</b>



<b>company type</b>	2. The change doesn't create a new entity or affect relationship with outsider 3. Must pass special resolution 3. Lodgement with ASIC: Within 14 days	<b>S116</b> <b>162(1)(a)</b> <b>162(3)</b>
<b>Disclosing Entities</b>	1. All listed entities 2. Company with >= 100 members	<b>Pt.1.2A</b>

OTHER ENTITIES		
<b>Unincorporated association</b>	1. Do not aim to make profit 2. Not a separate legal entity  Disadvantage: - No limited liability	
<b>Incorporated association</b>	1. Separate legal entity 2. Limited liability 3. If the aim to make profit, cannot be incorporated under Association Incorporated Act  Disadvantage: - Set up cost	
<b>Sole Proprietor or Sole trader</b>	1. Only 1 person 2. No separate legal entity	

SETTING UP A COMPANY		
<b>Procedure to set up company</b>	Mainly in...  Must decide whether it is a proprietary or public company  Must at least one member  Proposed member must consent in writing to apply  Must have at least: 3 directors (2 must reside in AU) => PUBLIC 1 director (must reside in AU) => PROPRIETARY  Directors must give consent in writing to become one  Public company must have one secretary	<b>S117; Must complete and lodge ASIC FORM 201</b>  <b>S114</b>  <b>S231</b>  <b>S201(A)(2)</b> <b>S201(A)(1)</b>  <b>S120</b>  <b>S204(A)</b>

	Must have a registered office	<b>S121</b>
	Must choose whether to use Replaceable Rule or Constitution	<b>Pt.2B.4</b>
	ASIC issue ACN, registers company and issues certificate	<b>S118</b>
	New company come to existence on the day	<b>S119</b>
<b>Company's name</b>	Can choose other name than ACN (Australian Company Number) However, certain name are prohibited Change name require SR (75%)	<b>S148</b> <b>S157</b>
<b>Company's legal capacity and power</b>	a) issue and cancel shares b) issue debenture c) grant issue over unissued shares d) distribute company's property to members e) grant a security interest in uncalled capital f) grant circulating security interest over property	<b>S124</b>

<b>RECORD KEEPING</b>			
<b>Financial records</b>	All company must keep a written financial report that contain: 1) Correct and explanation of transaction and financial position 2) True and fair transaction  Not keeping record = insolvency	<b>S286</b>  <b>S588E(4)</b>	<b>Criminal provision 286(3)</b>
<b>Minute book</b>	Minute of the meetings and resolutions of directors and members Minute must keep: 1) Proceeding and Resolutions of members' and directors' meeting 2) Resolution passed by members or directors without a meeting 3) If the company is a single director/shareholder company, declaration by the director  Members are entitled to inspect and request copies of minutes	<b>Pt.2G.3</b>  <b>S251A</b> <b>S251A</b> <b>S251A</b>  <b>S251B</b>	
<b>Minute shows the resolution of the meeting</b>	Minute is a formal record and it is the evidence of truth of the matters recorded E.g. resolution to issue preference shares (S254A(2))	<b>ASIC v Hellicar</b> Minute is a formal record, evidence of resolution	
<b>Register</b>	Company must keep record of: - Register of member - Option holders - Debenture holders	<b>S169</b> <b>S170</b> <b>S171</b>	
<b>Searching the register</b>	Any person can inspect the register - If member => No charge	<b>S173(1)</b>	

	<p>- If not member =&gt; Company may charge</p> <p>Company must give the list of shareholder within 7 days and the person will need to pay up (amount = \$250 under <b>Axa case</b>)</p> <p>Person applying for a copy of register must specify the purpose</p>	<p><b>S173(3)</b></p> <p><b>S173(3A)</b></p>	<p><b>Axa Asia Pacific Holding Ltd v Direct Share purchasing Corporation Pty Ltd</b></p>
<b>Limited use of information</b>	<p>Cannot use for personal gain</p>	<p><b>S177</b></p>	<p><b>O'Brien v Sporting Shooters Association of Australia</b> Copy of register for soliciting votes is not misleading.</p> <p><b>Westgold Resources NL v Precious Metals Australia Ltd</b> Copy of register for communicating with former S/H for participating against directors is misleading.</p>
<b>Correcting the register</b>	<p>Person may correct the register by bring an application to the court</p>	<p><b>S175</b></p>	

<b>REPORTING BY ENTITIES (details on REPORT table)</b>				
<b>Types of Company</b>	<b>Annual Financial Statement and Directors Report</b>	<b>Half-year Financial Report</b>	<b>Audit</b>	<b>Other</b>
<b>Disclosing Entities</b>	YES: <b>Pt.2M.3 Div 2</b>	YES: <b>S302</b>	YES: <b>S302</b>	<p>Continuous disclosure of certain information: <b>ASX Listing Rule 3.1</b></p> <p>Listing Rule requirement: <b>Ch.6 CA</b></p>
<p><b>Large Proprietary Company And Public company</b></p> <p><b>S292(1)</b> =&gt; Large proprietary company have to continuously disclose.</p>	<p>YES: <b>S295(4)</b></p> <p>Fail to comply with accounting standard and fair view: <b>BREACH OF S344; ASIC v Healey</b></p>	NO	<p>YES</p> <p><b>S301</b> =&gt; proprietary company don't need to be audited on annual basis</p>	
<p><b>Small Proprietary Company</b></p> <p><b>S292(2)</b> =&gt; small proprietary company does not have to</p>	<p>Only if required by member of ASIC</p> <p><b>Ch.2N</b> - Annual Review</p>	NO	<p>Only if required by member of ASIC</p>	