



MEMO

To: Board of Directors
From: Company Secretary
Subject: **WHAT IS A COMPANY?**

A company can be formally described as “an entity established by a group of persons for the purpose of carrying on some business or undertaking”.

Each of those persons receives a piece of paper noting his interest in, or ownership of, the company (i.e., a share or membership certificate) which, if a mutual (typically non-profit) organisation might be an identical proportion owned by each member, whereas if a profit-making body most often would represent each person’s ownership percentage based on, for example, how much money he contributed to form and operate the company.

A company is a **separate legal entity** which is distinct from its members, directors and other individuals connected to the company. It has its own rights and obligations. It has perpetual succession and the power to:

- acquire, hold and dispose of property in its own name
- enter into contracts
- sue and be sued.

The most common type of company is what is termed a Proprietary Limited (“Pty Ltd”) company; that is, a private company. It can have 1 to 50 members (not counting employees), each of whom is called a shareholder who can hold any number of shares depending on what number he has subscribed for or acquired by way of transfer from another shareholder.

Other companies are termed Public companies, which are typically governed by more stringent laws and regulations, such as:

- having a minimum 3 directors and 1 company secretary
- preparing annual audited accounts
- restricted related party dealings and granting financial benefits
- holding an annual general meeting.

Most companies are incorporated and registered under the Corporations Act and must follow the rules laid down therein, which can be supplemented by a constitution. Section 111J contains a ‘Small Business Guide’ which summarises the main rules in the Act, at least as they apply to Pty Ltd companies.



Chapter 2B of the Act sets out the basic features of a company, with Sections 124 ~ 127 detailing company powers and how they are exercised. Specifically, these cover:

- legal capacity
- constitutional restrictions
- agents and contracts
- execution of documents and deeds.

Forming a company to undertake a business venture, own assets, or incur liabilities, is the principal way that a person can limit their personal liability – and protect their own assets – to the amount that they invest in the company's shares (and/or are contracted to contribute if partly-paid shares). Shareholders are not liable for the company's debts.

Another reason of using a company structure is because the company tax rate is a maximum 30%, whereas the personal tax rate of a shareholder may be much higher.

A company is managed by directors who are appointed to represent the shareholders. Directors must remember to always act for the benefit of the company and not themselves. In fact, the Corporations Act lays down very strict guidelines in relation to directors' actions, duties and powers and to try and minimize any conflict of interest.

In contrast to shareholders, directors may become personally liable for a company's debts if they continue to let it trade when they know it may be unable to pay those debts as and when they fall due (insolvent trading). A director may also be liable if the company suffers losses resulting from a breach of certain director's duties.

Shareholders can make decisions for a company by meeting and voting on matters, subject of course to following the rules for calling and holdings meetings and passing resolutions.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.