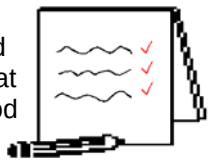
HEIDTMAN & CO.

LAWYERS

CORPORATE OBLIGATIONS

The Corporations Act 2001 (Cth) (the "**Act**") imposes many continuing obligations on companies and their directors. Unless your company is in the enviable position of having a full-time company secretary experienced in dealing with these issues, it may fall to you, as a director, to ensure your company complies with its obligations under the Act.

To make your life easier, we have prepared this "bullet-point" Fact Sheet to summarise some of the administrative and corporate obligations of proprietary companies of which you should be aware. Whilst it is not intended that this Fact Sheet be a comprehensive list, it is a useful reference tool for companies and their officers, and at the very least a good "check list".



Limitations On Proprietary Companies

* A proprietary company can have no more than 50 non-employee shareholders. An employee shareholder is a shareholder who is an employee of the company or of a subsidiary of the company, or a shareholder who was in that category when the shares were issued.
* A proprietary company must have at least one director who ordinarily resides in Australia.

Registered Office

* A company must have a registered office in Australia.
* If a company changes the address of its registered office, it must lodge a notice with the Australian Securities and Investments Commission (**"ASIC"**) within 28 days of doing so.

Place Of Business

* The name of a company must be prominently displayed at every place it carries on business and that is open to the public.
* If a company's principal place of business is different from its registered office, this must be specified on the registration form lodged with ASIC.
* A company must lodge a notice with ASIC within 28 days of changing its principal place of business.

Appointment Or Resignation Of Directors And Secretaries

* A company must obtain the signed consent of each director and secretary before their appointment.
* Directors and secretaries must be at least 18 years of age.
* A company must lodge a notice with ASIC specifying certain personal details of a director or secretary within 28 days of their appointment.
* A company must lodge a notice with ASIC within 28 days of the resignation of a director or secretary.

Execution Of Documents

* A company is no longer required to have a common seal.
* Companies can execute documents in the following ways:
  - ⇒ by 2 directors or a director and secretary (with or without seal);
  - ⇒ by 1 or more persons (who need not be directors) acting with the company's express or implied authority; or
  - ⇒ by a sole director of a company who is also the sole company secretary.
* It is worth noting that the Act provides that persons dealing with a company are entitled to assume that anyone who is held out by a company as an officer or agent of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by someone in such capacity.

Replaceable Rules and Constitution

* The Act contains a set of rules, which generally apply to all companies unless replaced by a substitute provision in a company's constitution (if it has one). These replaceable rules provide a standard set of rules that companies can use in lieu of a constitution.
* The Act provides that a company is obliged to send a copy of its constitution to a member within 7 days of a request in writing and upon payment of any fee (up to the prescribed amount) required by the company.

Resolutions In Lieu Of Meetings

* Unless the company's constitution provides otherwise, the directors of a company may pass a resolution without a directors' meeting if all of the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution.
* The members of a company may pass a resolution without a general meeting if the members entitled to vote on the resolution sign a document containing a

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statement that they are in favour of the resolution.

Convening Company Meetings

* The Act contains a replaceable rule which provides that a director of a company may call a meeting of the company's members.

* Meetings of members may also be convened by members with at least 5% of the votes that may be cast at a general meeting, at their own expense, or by such members or at least 100 members who are entitled to vote at the general meeting making a request in writing to the company, stating any resolution proposed at the meeting and signed by the members making the request.

* The Act provides that the director (s) must call the meeting of members within 21 days after the request is given to the company and the meeting held not later than 2 months after the request is given to the company.

Name, ACN/ABN Required On Some Documents

* A company must set out its name and Australian Company Number (**"ACN"**) on all of its public documents and negotiable instruments. However, a company can substitute its ACN with its Australian Business Number (**"ABN"**) if the last 9 digits of the ABN are the same, and in the same order, as the digits of its ACN.

* A company need not set out its ACN on the following kinds of documents:

  ⇒ Packaging and labelling, including envelopes and transport documents;

  ⇒ Advertisements which do not make a specific offer capable of being accepted;

  ⇒ Credit cards and credit card vouchers;

  ⇒ Machine generated receipts, including cash register receipts;

  ⇒ Business cards and "with compliments" slips; and

  ⇒ Items which are not documents, such as vehicles and TV advertisements.

Company Registers

* A company must keep, and allow anyone access to, the following registers:

  ⇒ A register of members detailing each member's name and address, and the date on which the entry of the member's name is made in the register;

  ⇒ A register of shares setting out the date on which each allotment of shares takes place, the number of shares in each allotment, the shares held by each member, the class of shares, the share numbers or share certificate numbers (if any) and the amount unpaid on shares (if any);

  ⇒ A register of charges setting out the date of creation, a short description of liability and the property charged, and the name of the person holding the charge. You should also note that a company must give ASIC notice of the creation of a charge within 45 days of its creation.

  ⇒ A company must keep its registers at its registered office, principal place of business or the place in Australia where the work involved in maintaining the register is done (in which case the company must lodge a notice with ASIC).

Minute Books

* A company must keep minute books in which it records all resolutions passed by directors and members (whether at or in lieu of a meeting), within 1 month.

* The minute books must be open for inspection by members, free of charge.

Annual Statements

* Each company has an annual review date (which is usually the anniversary of the company's registration date) and will receive on or about that date an annual statement setting out certain company details together with an invoice for the annual review fee payable. If the details of the company are correct, the company must, within 2 months of the annual review date, pay the annual review fee and (if applicable) pass a resolution regarding its solvency.

Financial Records

* A company must keep written financial records that correctly record and explain its transactions and financial position and performance for the period of 7 years after the relevant transactions are completed.

* The financial records may be kept wherever the company wishes. If the records about particular matters are to be kept outside of Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statement to be prepared.

* A director is entitled to access these records at any reasonable time.

Financial Reports

* A large proprietary company, that is, a proprietary company that satisfies 2 or more of the following conditions:

  ⇒ Consolidated Gross operating revenue of $10 million or more for the financial year;

  ⇒ Value of consolidated gross assets of $5 million or more at the end of its financial year; and

  ⇒ 50 or more employees at the end of its financial year,

must prepare annually a financial report and directors' report (basically a summary of the company's financial position), and lodge it with ASIC within 4 months of the end of its financial year.

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