

**CORPORATIONS/
COMPANY LAW
SUMMARY**



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TOPIC 1. INTRODUCTION

1.1 Corporation? Company?

Corporations law is the field of law that, unsurprisingly, deals with the regulation of corporations. A corporation is a legal structure through which individuals carry out activities, typically for a business or commercial purpose. Note that there are many other legal structures apart from corporations, including:

- Sole Trader;
- Partnership; and
- Unincorporated Association.

Corporations are regulated by the *Corporations Act 2001* (Cth) (referred to as **the Act**). The terms *corporation* and *company* are often used interchangeably, although *company* actually refers to a narrower range of structures than a corporation. Other legislation that can sometimes be considered during the study of corporation's law include:

- The *Australian Securities and Investments Commission Act 2001* (Cth),
- The *Foreign Acquisition and Takeovers Act 1975* (Cth), and
- The various jurisdictional Partnership statutes.

A company is an artificial entity recognized by law as a legal person with its own rights and liabilities. Specifically, s 9 defines a company as a legal entity registered under the Act. There are a number of different types of companies. The two most important types are proprietary (Pty) companies and public companies.

A corporation is a broader concept that includes companies (as per s 57A). Other types of corporations include foreign registered bodies and unincorporated bodies that may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose.

1.2 What is a company?

Companies have a number of unique and important features:

- **Legal personality.** A company is a legal entity that is separate to and distinct from its owners (shareholders), those who control its business (directors), and those who carry out its business (officers and employees). Even though the shareholders, directors and officers and employees may change over time, this does not affect the company's existence as a legal person. The company may exercise all the rights and powers of an individual.
- **Shareholders.** Shareholders are the owners of the company. Importantly, shareholders do not have any control over the business of the company – there is a separation of ownership and control. This is one of the key features of companies. Furthermore, shares in the company are usually transferable. This distinguishes companies from, for example, partnerships. Note that under the Act shareholders are known as members.
- **Directors.** Directors set the strategic direction for the company and provide oversight of its day-to-day activities. Some directors may be actively involved in the day-to-day running of the company (executive directors, e.g. CEO) while others may not be (non-executive directors).
- **Officers and employees.** These are the people who are engaged in the day-to-day running of the company.
- company Y but has only paid \$1 of the share capital, if company Y incurs a debt of \$10 that it is unable to repay, Mr X will only be liable to contribute \$1 to repay the debt, being the amount of his unpaid share capital.

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