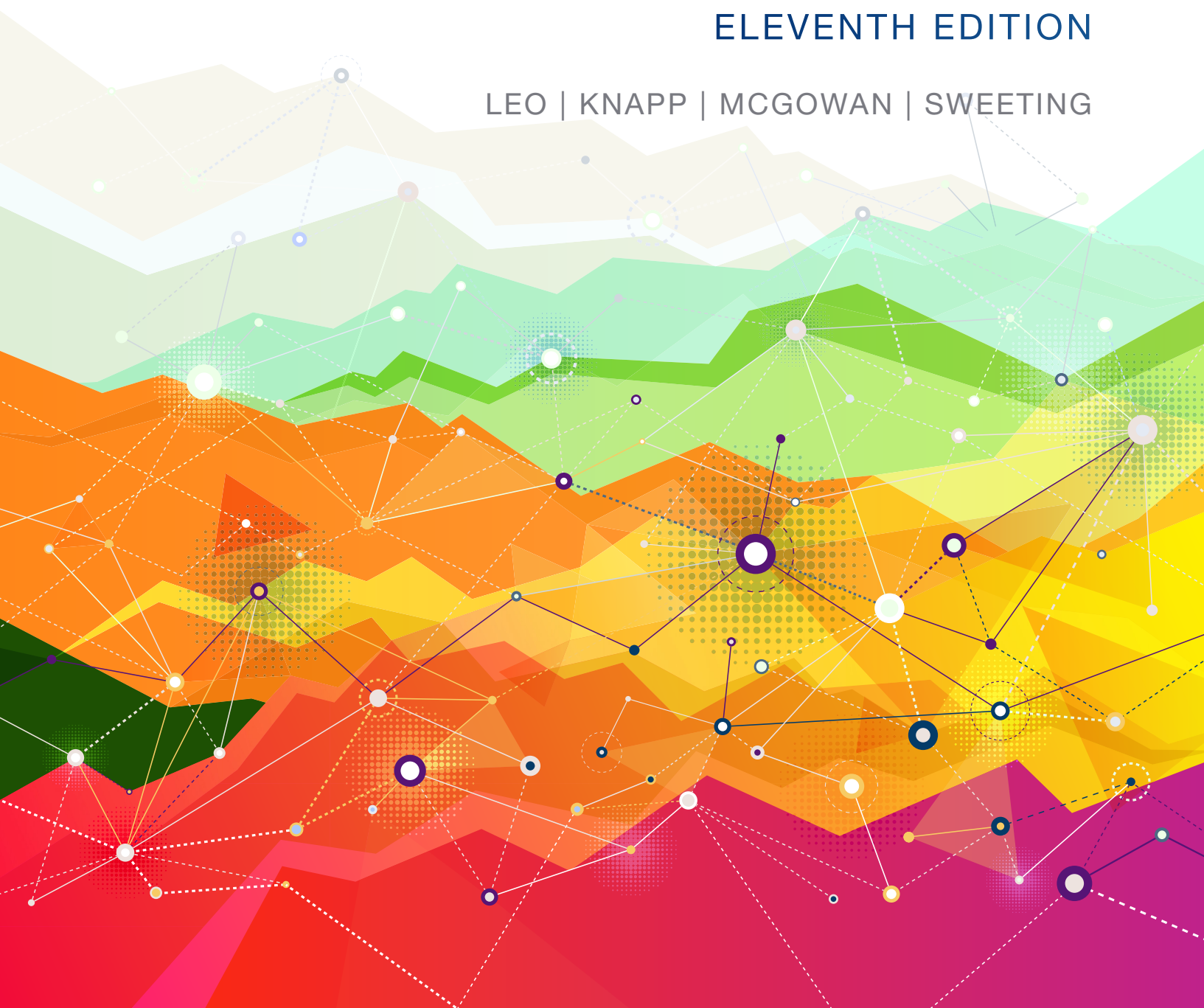


Company Accounting

ELEVENTH EDITION

LEO | KNAPP | MCGOWAN | SWEETING



WILEY

Company accounting

11TH EDITION

Ken Leo

Jeffrey Knapp

Susan McGowan

John Sweeting

WILEY

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CHAPTER 1

Nature and regulation of companies

CHAPTER AIM

This chapter provides an introduction to the corporate form of business organisation by examining the nature of a company and the regulation relating to company formation, administration and funding. In addition, we consider the legislation and bodies that establish and regulate the requirements for financial reporting, including accounting standards, in the context of corporations.

LEARNING OBJECTIVES

After studying this chapter, you should be able to:

- 1.1 summarise the nature and attributes of a company
 - 1.2 discuss the different types of companies that may be formed under the *Corporations Act 2001*
 - 1.3 describe the necessary documentation for forming a company
 - 1.4 describe the types of records needed to manage a company
 - 1.5 compare and contrast shares and debentures, and discuss the reasons for issuing disclosure documents
 - 1.6 discuss the background and purpose of the *Corporations Act 2001* by which companies are formed, administered and dissolved
 - 1.7 evaluate the reasons for the development of accounting standards and describe the current arrangements for establishing accounting standards in Australia, subject to global influences in the standard-setting process
 - 1.8 discuss the roles played by the Australian Securities and Investments Commission (ASIC) and the Australian Securities Exchange Limited (ASX)
 - 1.9 analyse the concepts of general purpose financial reporting and the reporting entity
 - 1.10 describe the differential reporting requirements.
-

BEFORE YOU BEGIN

Before studying this chapter, you should:

- revise the nature of the sole trader and partnership forms of business
 - recall the nature of assets, liabilities and equity
 - recall the basic assumptions made by accountants in accounting for an entity.
-

Introduction

Accounting for corporations (companies) can be an interesting and challenging activity. This text is written assuming that the reader has an understanding of the basic accounting double-entry system and the issues facing sole trader or partnership businesses. If a sole trader or a partnership business decides that its activities are to be reorganised as a company, or if a business is to begin its life as a company, this text should prove invaluable as a source of information to account for the corporate form of organisation.

The prevalence of the corporate form of organisation is evident by the fact that there are almost 2.5 million registered companies in Australia (ASIC 2016). This popularity is due to the advantages this form of organisation provides, owing to its nature and unique attributes. However, this also results in corporations being subject to greater government regulation than are sole traders and partnerships. This regulation comes in various forms, the main features emphasised in this text being the corporate law and accounting standards; however, additional regulation is imposed on companies wishing to list their shares on a securities exchange. The study of company accounting begins by asking the obvious question: ‘What is a company and why do people form companies?’

1.1 The nature of a company

LEARNING OBJECTIVE 1.1 Summarise the nature and attributes of a company.

A company is a form of organisation established in accordance with the *Corporations Act 2001* (hereafter generally referred to as the Act). A company comes into existence in Australia only when it has been registered by the Australian Securities and Investments Commission (ASIC) (s. 119 of the Act). Once registered, the company has all the powers set out in s. 124(1) of the Act:

A company has the legal capacity and powers of an individual both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:

- (a) issue and cancel shares in the company;
 - (b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);
 - (c) grant options over unissued shares in the company;
 - (d) distribute any of the company’s property among the members, in kind or otherwise;
 - (e) grant a security interest in uncalled capital;
 - (f) grant a circulating security interest over the company’s property;
 - (g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction;
 - (h) do anything that it is authorised to do by any other law (including a law of a foreign country).
- A company limited by guarantee does not have the power to issue shares.

Even if the management of a company is not acting in the company’s interests, the company still has the legal capacity to carry out those actions (s. 124(2)). Furthermore, a company may specify, in a separate constitution, its objectives; an action of the company is not invalid merely because it is contrary to or beyond these objectives (s. 125(2)).

A company may or may not have a name. If no name is given, then a company is to be known by its Australian company number (ACN) (s. 148(1)). All companies are given an ACN on registration (s. 118(1)), and a company is required by s. 153 to set out its name and ACN on all of its public documents and negotiable instruments. A company is entitled to change its name (s. 157), but its ACN remains with the company throughout its life, and its rights and obligations do not change merely because of the name change (s. 161). On the introduction of the goods and services tax (GST) into Australia, all companies were required also to have an Australian business number (ABN) and to register for the GST.

One of the chief reasons for forming a company is that the corporate form of organisation may permit individuals to have **limited liability**. In a company limited by shares (see section 1.2 of this chapter),

the shareholders of the company are liable only to the extent of any amounts unpaid on their shares in the winding-up of the company (s. 516). Contrast this with the partnership form of organisation, where each partner is jointly and severally liable for all partnership debts (i.e. unlimited liability). If one or more partners are insolvent, the remaining solvent partners are liable to meet all losses and debts out of their private assets.

The principle of 'limited liability' was first established legally by the Companies Act of 1856 in England. A company was given a legal identity separate and distinct from its members, and was not affected by the death or disability of any one of its members. The formation of a company is thus considered to have a number of advantages over the partnership and sole trader forms of organisation.

- A company's members are liable for only a limited amount of business debts to the extent of the amount unpaid on their shares, whereas partnerships and sole traders have unlimited liability.
- A company has a legal existence distinct from its owners, managers, operators, employees and agents. It is an artificial, legally created entity, separate and distinct from its owners. Hence, it has rights in perpetuity in that it is not affected by the death, disability or retirement of any of its members.
- Members are allowed to sell their shares at any time to another person without having to obtain permission from the other members, provided that a proper instrument of transfer has been delivered to the company (s. 1071B).
- A company is entitled to raise large amounts of funds by issuing shares, debentures and notes, particularly if it is a public company.

Incorporation brings with it several other features apart from limited liability. As a result of its separate legal existence, a company has its own property, its own rights, and its own obligations. A company's money and other assets belong to the company, not the owners, and the money must be used for the company's purposes. Furthermore, a company has the powers of an individual, including the powers to own, as well as dispose of, assets and to enter into contracts. Finally, a company has the power to sue other parties, and can be sued by others.

Since the owners of limited liability companies enjoy the benefits of limited liability, the companies must, in return, be more accountable to society for their actions. The regulation of companies has increased over time to ensure the accountability of owners and managers.

LEARNING CHECK

- Companies are formed and regulated under the *Corporations Act 2001*, which is administered throughout Australia by the Australian Securities and Investments Commission (ASIC).
- A company has the legal powers of a natural person as well as the power of a body corporate, including the right to issue shares and debentures in order to raise funds, the right to own assets and enter contracts, and the right to sue other parties.
- The major benefit of forming a company is the limited liability it provides to shareholders/members. As a result, the company must be accountable to society for its actions.

1.2 Different types of companies

LEARNING OBJECTIVE 1.2 Discuss the different types of companies that may be formed under the *Corporations Act 2001*.

Two main types of companies are permitted to be registered under the Corporations Act, namely a proprietary company and a public company (s. 112). According to s. 112, the Act permits proprietary companies and public companies to be classified as:

- proprietary companies:
 - limited by shares
 - unlimited with share capital

- public companies
 - limited by shares
 - limited by guarantee
 - unlimited with share capital
 - no liability company.

A trade union cannot be registered as a company under the Act (s. 116).

1.2.1 Proprietary companies

Proprietary companies are the most common type of company operating in Australia, usually in the small-business sector. As an aid to small business, Part 1.5 of the Act provides a guide to the setting up and running of such a business operating as a proprietary company. Several important aspects of this type of company are specified in the Act, as presented below.

- A proprietary company must have a share capital (i.e. it can be limited only by shares, and not by guarantee (s. 112)).
- A proprietary company must have at least one shareholder (s. 114), and cannot have more than 50 shareholders (not including employee shareholders) (s. 113(1)). Furthermore, it needs to have at least one director (s. 201A), who can be the sole shareholder and who must ordinarily reside in Australia. A proprietary company need not have a secretary (s. 204A(1)).
- There is no need for a proprietary company to place any restriction on the transfer of its shares.
- In relation to the funding of operations, a proprietary company is restricted to the extent that it must not engage in any fundraising activity under Chapter 6D of the Act that would require the company to lodge a disclosure document with ASIC. This means that proprietary companies cannot raise funds directly from the public at large, although shares can be offered to existing shareholders or employees (s. 113(3)).
- A proprietary company must have the word ‘Proprietary’ or the abbreviation ‘Pty’ as part of its name. If it is a limited proprietary company, the additional word ‘Limited’ or the abbreviation ‘Ltd’ must also be part of its name (ss. 148–149). In contrast, an unlimited proprietary company will not have the word ‘Limited’ or the abbreviation ‘Ltd’ as part of its name.
- Proprietary companies are to be classified as either ‘large’ or ‘small’. The large/small classification is particularly important in relation to the accounting requirements imposed on a proprietary company. A company’s classification can change from one financial year to another as the circumstances change. A small proprietary company is defined in s. 45A(2) as one which satisfies *at least two* of the following tests:
 - (a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than \$25 million . . .
 - (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than \$12.5 million . . .
 - (c) the company and the entities it controls (if any) have fewer than 50 . . . employees at the end of the financial year.

If a proprietary company is not classified as ‘small’, then it is ‘large’ and is subject to additional reporting obligations under the Act. Determination of consolidated revenue and consolidated gross assets must occur in line with current accounting standards, and part-time employees must be counted as an appropriate fraction of a full-time equivalent (s. 45A(5) and (6)). The need to comply with accounting standards is particularly important when using the gross assets test; hence, for example, all acquired goodwill must be recognised in accordance with AASB 3 *Business Combinations*, and income tax must be accounted for in accordance with AASB 112 *Income Taxes*. Under the asset test ‘gross assets’ are total consolidated current and non-current assets measured at their carrying amounts, which means that assets are net of accumulated depreciation/amortisation or impairment losses (AASB 116/IAS 16 paragraph 6).

- The Act does not require a small proprietary company to prepare formal financial statements or to have them audited (ss. 292(2) and 301(2)), but they must maintain sufficient accounting records to

allow annual accounts to be prepared and audited. Audited accounts must be prepared if requested by shareholders holding at least 5% of the voting shares in the company or by ASIC (ss. 293 and 294). If the shareholders so request, a small proprietary company does not have to prepare its financial statements in accordance with applicable accounting standards (s. 296(1A)).

- Large proprietary companies must prepare annual reports in accordance with accounting standards (s. 296) that give a true and fair view of the financial position and performance of the company (s. 297), have them audited (s. 301) and send them to shareholders, either in electronic or hard form. They must also lodge these financial reports with ASIC.
- A small proprietary company is required to prepare financial reports if it is controlled by a foreign company for all or part of a year, and that foreign company has not lodged financial statements with ASIC covering the small proprietary company's profit or loss (s. 292(2)).

Most proprietary companies are small businesses, and the Act includes a 'small business guide' in Part 1.5, following s. 111J, to help small businesses understand the sections of the Act that apply particularly to them.

1.2.2 Public companies

A **public company** is any company that is not a proprietary company (s. 9). Unlike a proprietary company, a public company is not required to have a share capital. It may be a **company limited by shares**, but alternatively it may be a **company limited by guarantee** (i.e. one in which members guarantee to contribute a certain amount in the event of liquidation).

If the company is limited, this means that the company was formed on the basis of having the liability of its members limited to the respective amounts that members undertake to contribute to the property of the company if it is wound up (ss. 516–518). Most public companies are limited companies having a share capital. Generally speaking, the ownership of a public company is widely spread, with large numbers of people owning a relatively small number of shares. The main advantage of the public company is that it is entitled to issue a disclosure document inviting the public to subscribe for any shares, debentures, notes or loans, and to have these shares, debentures etc. listed for easy transferability on one or more of Australia's securities exchanges. Since the activities of many public companies can significantly affect the wellbeing of the general public, many sections of the Act appear to be enacted for the protection of the 'public interest'. For example, public companies generally have additional rules in relation to:

- the appointment, age, removal, voting when there are vested interests, and disclosure of any shareholdings of the directors to the securities exchange (Chapters 2D and 2E of the Act)
- the appointment of a registered auditor (s. 301)
- the preparation of financial statements in accordance with accounting standards and regulations (ss. 292 and 296).

A public company, as with a proprietary company, need have only one member; however, a public company is required to have at least three directors, two of whom must ordinarily reside in Australia (s. 201A(2)). It must also appoint at least one secretary who is an Australian resident (s. 204A(2)).

1.2.3 Other titles for companies

Many companies with special titles are identified in the Act; for example, companies may be described as listed corporations, disclosing entities, foreign companies, and no liability companies. Most of these companies are also public companies. A brief introduction and discussion of these companies, some of which are considered further in later chapters, follows.

Listed corporations

A listed corporation is a public company which is included in an official list of a securities exchange. There are more than 2000 listed entities in Australia (ASIC 2016). Such a company is entitled to have

its shares actively traded on the securities exchange in any of Australia's capital cities. The Australian Securities Exchange (ASX) has a set of Listing Rules which such companies are required to follow in relation to many aspects of business conduct, as well as admission, suspension of trading, and removal from the ASX list.

Disclosing entities

A disclosing entity is defined in s. 111AC of the Act as an entity which has issued 'enhanced disclosure' (ED) securities; in other words, it is an entity which:

- has its shares listed on the ASX or another securities exchange, or
- is issuing securities (other than debentures) for which a disclosure document has been lodged with ASIC, or
- is offering its securities as consideration for the acquisition of shares in another company under a takeover scheme, or
- is issuing shares under a compromise or scheme of arrangement, or
- is a borrower, which has issued debentures and appointed a trustee for the debenture holders.

As well as the requirement to present annual financial statements, a disclosing entity must present half-yearly financial statements (s. 111AO) and is subject to continuous disclosure requirements as required by ss. 674 and 675 (s. 111AP). These half-yearly financial statements must also be audited or reviewed, lodged with ASIC (s. 302), and must comply with accounting standards (s. 304).

Foreign companies

Foreign companies are public and proprietary companies which have been incorporated outside Australia, or those incorporated in an external territory of Australia. Such companies are prohibited from carrying on business in Australia unless they are registered with ASIC (s. 601CD) and have appointed at least one local agent (s. 601CF). This involves the registration of a company name and the allocation of an Australian registered body number (ARBN) (s. 601DE). Foreign companies are generally required to submit to ASIC copies of their financial statements (s. 601CK) (but see s. 601CDA) and to give notice to ASIC when they have ceased business (s. 601CL).

No liability companies

Many public companies engaged in the mining industry in Australia are registered as **no liability (NL) companies**. Companies so registered must have the words 'No Liability' at the end of their names (or abbreviated to NL) (ss. 148 and 149). The main benefit of being a no liability company is the ability to attract investors to place their funds in high-risk investments. If a person accepts shares in a no liability company, the Act states that this does not constitute a contract by the person to contribute to the debts and liabilities of the company (s. 254M). Instead, if the shareholder ignores a call on their shares, the company can forfeit their shares. The ASX Listing Rules contain certain additional requirements for NL companies.

According to s. 112(2) of the Act, a no liability company may be so registered only if:

- (a) the company has a share capital; and
- (b) the company's constitution states that its sole objects are mining purposes; and
- (c) the company has no contractual right under its constitution to recover calls made on its shares from a shareholder who fails to pay them.

'Mining purposes' is defined in s. 9 as any or all of the following purposes:

- (a) prospecting for ores, metals or minerals;
- (b) obtaining, by any mode or method, ores, metals or minerals;
- (c) the sale or other disposal of ores, metals, minerals or other products of mining;
- (d) the carrying on of any business or activity necessary for, or incidental to, any of the foregoing purposes; whether in Australia or elsewhere, but does not include quarrying operations for the sole purpose of obtaining stone for building, roadmaking or similar purposes.

LEARNING CHECK

- Two main types of companies may be formed under the Act, namely proprietary and public companies.
- A proprietary company must have at least one shareholder, and cannot be involved in raising funds from the public at large.
- Proprietary companies may be classified as either large or small. Large proprietary companies have additional regulations imposed on them, particularly in relation to disclosure of information in accordance with accounting standards.
- Public companies may or may not have a share capital and may be limited by guarantee.
- Public companies are entitled to raise funds from the public after complying with the provisions of the Act and, for ASX-listed companies, the Listing Rules of the ASX.
- A no liability company is a public company that operates in the mining industry and that has no right to recover calls on partly paid shares if the shareholder fails to pay.

1.3 Forming a company

LEARNING OBJECTIVE 1.3 Describe the necessary documentation for forming a company.

1.3.1 Application forms

In order to register a company, a person must lodge an application with ASIC (s. 117(1)). The contents of the application are specified in s. 117(2):

The application must state the following:

- (a) the type of company that is proposed to be registered under this Act;
- (b) the company's proposed name (unless the ACN is to be used in its name);
- (c) the name and address of each person who consents to become a member;
- (d) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a director;
- (e) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a company secretary;
- (f) the address of each person who consents in writing to become a director or company secretary;
- (g) the address of the company's proposed registered office;
- (h) for a public company — the proposed opening hours of its registered office (if they are not the standard opening hours);
- (j) the address of the company's proposed principal place of business (if it is not the address of the proposed registered office);
- (k) for a company limited by shares or an unlimited company — the following:
 - (i) the number and class of shares each member agrees in writing to take up;
 - (ii) the amount (if any) each member agrees in writing to pay for each share;
 - (iia) whether the shares each member agrees in writing to take up will be fully paid on registration;
 - (iii) if that amount is not to be paid in full on registration — the amount (if any) each member agrees in writing to be unpaid on each share;
 - (iv) whether or not the shares each member agrees in writing to take up will be beneficially owned by the member on registration;
- (l) for a public company that is limited by shares or is an unlimited company, if shares will be issued for non-cash consideration — the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the application;
- (m) for a company limited by guarantee — the proposed amount of the guarantee that each member agrees to in writing;
- (ma) whether or not, on registration, the company will have an ultimate holding company;

- (mb) if, on registration, the company will have an ultimate holding company — the following:
 - (i) the name of the ultimate holding company;
 - (ii) if the ultimate holding company is registered in Australia — its ABN, ACN or ARBN;
 - (iii) if the ultimate holding company is not registered in Australia — the place at which it was incorporated or formed;
- (n) the State or Territory in this jurisdiction in which the company is to be taken to be registered.

To register a company in accordance with s. 117, all these details must be provided on the prescribed application form.

1.3.2 The certificate of registration

To register a company, ASIC issues a **certificate of registration** in accordance with the Act. Once ASIC is satisfied that the application complies with s. 117, ASIC will:

- give the company an ACN (Australian company number)
- register the company
- issue a certificate that states the company's name, its ACN, the type of company, the date of registration, and the fact that the company is registered as a company under the Act (s. 118).

The existence of the certificate is conclusive evidence that all requirements of the Act for registration have been complied with, and the company is duly registered on the date specified in the certificate (s. 119). ASIC must keep a record of the registration of the company (s. 118(2)).

Once a company is registered, it legally comes into existence (s. 119) and remains in existence until it is deregistered. When registered, a company is capable of performing all the functions of a corporate body: it is capable of suing and being sued; it has perpetual succession; it may have a common seal; it has power to perform all the functions specified in s. 124 of the Act, described in the introduction to this chapter. Any expenses incurred in promoting and setting up a company may be paid out of the company's assets (s. 122).

1.3.3 Replaceable rules and a constitution

Each company must have a set of rules governing the conduct of its operations. Several of the rules that originally appeared in old Schedules to the Corporations Law, and which governed the internal affairs of companies in relation to their shareholders, have been built into the Corporations Act and are called **replaceable rules**. In order to carry out its operations, a company can adopt these replaceable rules as its own rules. The replaceable rules, listed in s. 141, deal with (1) the appointment, powers, remuneration and termination of directors, (2) directors' meetings, (3) inspection of company records, (4) members' meetings, and (5) shares and share transfers.

However, if a company wishes to adopt different rules from these replaceable rules or additional rules, it will need to set up its own **constitution** (s. 135(2)), specifying the rules that it wishes to have for operating its internal affairs.

If a company decides to have a constitution to determine relationships between management and shareholders, and between different classes of shareholders, then this constitution must be lodged with ASIC along with the application for registration (s. 117(3)), if the company is a public company. Alternatively, a company may decide to adopt a constitution after the company's registration. If so, a copy of the adopted constitution must be lodged with ASIC within 14 days of its adoption (s. 136(5)). The company can also modify or repeal its constitution. If so, such information must also flow to ASIC. In the interests of simplification, it was the hope of the legislators that as few companies as possible would establish their own constitutions and choose instead to abide by the replaceable rules in the Act.

The effect of the replaceable rules and a constitution (if any) is set out in s. 140:

- (1) A company's constitution (if any) and any replaceable rules that apply to the company have effect as a contract:
 - (a) between the company and each member; and

- (b) between the company and each director and company secretary; and
 - (c) between a member and each other member;
- under which each person agrees to observe and perform the constitution and rules so far as they apply to that person.
- (2) Unless a member of a company agrees in writing to be bound, they are not bound by a modification of the constitution made after the date on which they became a member so far as the modification:
- (a) requires the member to take up additional shares; or
 - (b) increases the member's liability to contribute to the share capital of, or otherwise to pay money to, the company; or
 - (c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made:
 - (i) in connection with the company's change from a public company to a proprietary company under Part 2B.7; or
 - (ii) to insert proportional takeover approval provisions into the company's constitution.

LEARNING CHECK

- Companies are formed by lodging an application, containing all of the information required by s. 117, with ASIC.
- A company is given a certificate of registration by ASIC to indicate that it now legally exists.
- A company may choose to adopt the replaceable rules contained in the Act, or establish different rules by setting up its own constitution.

1.4 Administering a company

LEARNING OBJECTIVE 1.4 Describe the types of records needed to manage a company.

The administration of a company is placed in the hands of one or more directors who oversee the management of the company on behalf of its members in accordance with the company's replaceable rules or constitution and the provisions of the Corporations Act. In order to facilitate the actions of the directors in carrying out their obligations to members, the Act specifies that a number of registers and records are to be kept by the company.

- *Minute books* of the proceedings and decisions made at all directors' and shareholders' meetings as well as all resolutions passed without a meeting (s. 251A). If the company is a proprietary company with only one director, any declarations by this director must be minuted.
- *Financial records* that will enable financial statements to be prepared and audited from time to time in accordance with the Act (ss. 286, 292, 302 and 303).
- *Register of members*, or share register, giving each member's name and address, and the date on which the member's name is entered on the register. If the company has a share capital, the register must also show the date on which an allotment of shares takes place, the number of shares in each allotment, the shares held by each member, the class of shares held, the share numbers (if any), the amount paid on the shares, and whether or not the shares are fully paid (s. 169).
- *Register of option holders* to record the names and addresses of the holders of options over the shares of a company. The register must include the number and description of the shares over which options were granted, details of any event that must happen before the options can be exercised, and any consideration for the grant of the options and for the exercise of the options (s. 170). Copies of documents which grant an option over shares must be kept with this register.
- *Register of debenture holders* to record each debenture holder's name and address, and the amount of the debentures held (s. 171).

All registers must be kept at the company's registered office, or at the company's principal place of business, or at a location approved by ASIC. The location must be in Australia (s. 172).