

**COMPANY LAW ASSIGNMENT**



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## Introduction

This assignment is based on the Corporations Act 2001, and its impact on organisational working procedure. Corporations Act 2001 is an Australian law that is mostly related with the corporate sectors and their working behaviour. In 19th July of 2013, the Act came in force. In the Territorial Application of the Act, section 9 has included with jurisdiction and they are applicable to each state of Australia even including the coastal areas. This Act is not applicable to those states that are not referring to the country<sup>1</sup>. According to the Act registration, the company has certain legal existence to follow, and they are different from each other based on their designation. Such as, the law or the rules that have selected for the entrepreneur of a company, certainly the laws for the employees and managers will be different from them. After being registered in this law, the companies need to follow each rule that has been specified for each group members of a company. The thesis statement of this assignment is to discuss the key sections of the Act that helps to improve the stakeholder's role in an organisation.

## Law

### Corporation Act

According to this particular act, shareholders of a company is not liable to them, they are just completing their duty, which is investing money by comparing the beneficial advantages. In case, if a shareholder is one of the directors of the company then the scenario will be different from this<sup>2</sup>. Shareholders are interested in gaining revenue and calculating their share in the company, but a director has the responsibility and the self-motive to make the business successful and reach to a high position. Therefore, in this type of cases, the violation of section 1.3 and 1.4 is detected. The role in these points of the Act is only depicted of a director not of the one, who is director and

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<sup>1</sup> Wendy Beekes, Brown, Philip, and Zhang, Qiyu, 'Corporate governance and the informativeness of disclosures in Australia: a re-examination' (2015) 55 *Accounting & Finance* 931

<sup>2</sup>John Bradford Braithwaite, 'Restorative Justice and Responsive Regulation: The Question of Evidence' (2016) 18 *International Journal of Trade and Business Law* 24

shareholder at the same time<sup>3</sup>. If a company is registered in this act, they need to follow the rules and regulations of this Act in any situation. In case of *Boyd v Ackley* (1962), the applicant claimed that the accountants were negligent in their work. In this case, the husband and wife, both are the owners of a company, as they have owned all the shares of that particular company. The difference accounts were friends with the husband and wife. While the judgement period the high court has found that, many sectors need to develop as the claim is on the professional negligence and extra paying to some of the employees. In this case, the shareholders' rights were preserved due to the Corporation Act, 2001 and due to this, they were able to take legal action against the defendant. The Corporation Act 2001 allowed the plaintiffs to take legal action against the negligence of the defendant for which they need to suffer from monetary loss. This is also as per the Corporation Act, 2001 where the directors of a company are liable if a shareholder suffers from financial loss due to the director.

The importance of the Corporation Act in this context has a special account<sup>4</sup>. According to the topic point, if the Corporation Act 2001, and its rules and regulations can be utilized fully, then the shareholders and the directors would be able to improve their situation and position in company.

Moreover, to improve the liability and trust to the company or to the entrepreneur, the shareholders need to be consistent in their behavioural ethics. As they are the shareholders of the company, does not mean they would not help the company while they will face problems in the future. Most commonly, it is visible, the characteristic that the shareholders bear, is self-motivated and self-revenue gaining is the main point of their business deal. That is the most important reason, the shareholders are not able to create or establish any kind of reliability towards the company. However, the plaintiffs (the company) has won the case, as the court decided that professional negligence is not a mere crime and the victim needs to be punished. In this case, also, the Corporation Act 2001, Act has not followed, as the duty and responsibility was clearly described

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<sup>3</sup> Daniel Mogaka Makori, and Jagongo, Ambrose, 'Environmental accounting and firm profitability: An empirical analysis of selected firms listed in Bombay stock exchange' (2013) 28 *Journal of Accounting and Public Policy* 87

<sup>4</sup> Khaled Elsayed, and Wahba, Hayam, 'Reinvestigating the relationship between ownership structure and inventory management: A corporate governance perspective' (2013) 143 *International Journal of Production Economics* 207

in the act. Therefore, if the accounts have maintained the instruction then, the point of cases and court would never come<sup>5</sup>.

In March 2000 the 2F, 1A has been introduced to the Australian consumers. According to this part, the availability of statutory derivative has been mentioned through this act. Moreover, it states that members or officers of a company can take action on behalf of the directors of the company for special reasons. Before the arrivals of this act, statutory depravity was never been so popular, if it has not come, then this will never been popular also. This part has been introduced into the Corporation Act to represents that the officers, employees and the directors have same interest on a business, therefore, there is no reason to avoid them and eliminate their roles and credit from organisational success. In order to remove the disincentive in using the Part 2F.1A, new provision of s242 (2) need to be introduced in the act.

### **Application of the law**

#### **The directors and enhancement of their liability for company debts**

A company director can be liable to the company when it needed. While the company has followed by due paid, rather the directors can help the company to resolve the company as all of them are indulged with the same business. Moreover, as per this act, if there were numbers of directors in a company, then it would be better to overcome a loss or a low state of the business. In this case, if the fault is of one individual shareholder, then other directors of the company can compensate it. Moreover, in case of increasing the liability towards the company, directors can consistent with their investment and report records, unless it can lead them to civil penalty according to this law. Moreover, as example, if the directors are doing their duty accordingly, then they can become the trusty of the company assets.

As mentioned in the upper section, the reliability of the directors is much more than the shareholders, according to the Corporations Act. As mentioned in the topic that the directors and the shareholders are need to develop their position and become one of the strong participate of the

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<sup>5</sup> Grant Richardson,, Taylor, Grantley, and Lanis, Roman, 'The imp Act of board of director oversight characteristics on corporate tax aggressiveness: An empirical analysis' (2013) 32 *Journal of Accounting and Public Policy* 68

business. In most of the cases, the company entrepreneur is considered as the most powerful. It needs to depend on the amount of shares of the shareholders, not only dominated by the one<sup>6</sup>.

As it can be seen from the case of *Spies v The Queen* (2000), that the debate of the responsibility and duty of directors has become more furious in this case. In this case, the Spies, is the appellant and acts as one of the major shareholders and directors of a company. Mr. Spies is the one-third shareholder of that company. Nevertheless, it faced problem in its financial business. In this process, their liabilities exceeded their assets, such as; from \$230,000 was the total loss amount. On the other hand, the liabilities exceeded from 360,000 in the following year. Nevertheless, the directors have resolved the problem, by meeting in themselves. Mr. Spies has appealed against the Court of Criminal Appeals decision, and according to the court, he has been proved as guilty, s 229 (4) charge<sup>7</sup>.

Here, according to the Corporations Act 2001, Part 2F.1A, if they were directed that if needed to take a decision on any trouble situation, the board of directors needed to permit through a meeting to take the decisions. However, this case belongs to the 80th century and the Corporations Act 2001, came in 2001, therefore, it cannot be said that the case were resolved through this particular act. Nevertheless, it is important that the case have significant account of this Corporations Act 2001. The liabilities maintenance has not been done according to Corporations Act 2001, which can be considered, as the occurrence of this Act was not established at that time<sup>8</sup>.

### **Argument regarding the law**

#### **Critically analysing the effectivity of the Act towards making the directors liable**

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<sup>6</sup> Ames.net.au. (2017). *Refugee & Migrant - Settlement, Education & Employment Services | AMES Australia*. Available from: <https://www.ames.net.au/> [Accessed 27 May 2017].

<sup>7</sup> *Spies v The Queen* (2000) 201 CLR 603

<sup>8</sup> *Boyd v. Ackley* (1962), 32 D.L.R. 77

According to this act, an individual company that follows this act has certain powers. They are included with dealing and disposing in company properties or other assets of the company. It can connect itself with other companies that are following this Act<sup>9</sup>. Moreover, the power of suing any company or it also can be sued by any company for violation of any business rules. More than these powers, it has also specific rules for company stakeholders, shareholders, and directors of a company<sup>10</sup>. As per the topic, the company refuses to take the responsibility or the assurance that the shareholders and the directors would be upgraded according to their responsibility and their shares in the company. Nevertheless, according to the Corporations Act 2001, there are chances that the directors groups need to be developed to prove its liability towards the company. Moreover, the directors need to take care of the commercial practices also to become liable to the company. **If the Part 2F.1A has been followed, then the company will understand that, there is equal interest of the shareholders and the directors, based on the amount of investment in that particular business. As, the company has avoided to take responsibility of the directors, here the roles of a director has been affected by this act. As directed in Part 2F.1A, the company has not followed that. Therefore, in case if the company faces any financial problem in its future years, then there will no directors, who will help the company. As directed in the section 1.4 of Corporation act, the directors need to help the company in its financial problem, but in this case, if the company will not follow the act properly and try to spoil the director's role then, the directors will also follow the act properly.**

In other hand, as the Act has certain description of the duty and responsibilities of shareholders and directors. Therefore, if the directors want to achieve the liability or to establish their liability then, these are important guidance to be followed<sup>11</sup>. As per the Corporation Act 2001, the shareholders also have some responsibility towards the directors by helping them in carrying out the business effectively by increasing their investment. Hence, if the shareholders demands one-sided favour then this is not at par with the corporation act, 2001<sup>12</sup>.

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<sup>9</sup> Janine Hiller, , "The Benefit Corporation And Corporate Social Responsibility" (2012)

<sup>10</sup> Steven Munch,, 'Improving the benefit corporation: How traditional governance mechanisms can enhance the innovative new business form' (2012)

<sup>11</sup> David Ciepley,, 'Beyond public and private: Toward a political theory of the corporation' (2013) 107 *American Political Science Review* 139.

<sup>12</sup> Salomon v A Salomon & Co Ltd (1896) AC 22

As the company is not ready to take over any responsibility about the shareholders, these are the ways to increase and improve their liability. In the case of *Salomon v Salomon*, the company has cases (1896), which they want to build a separate business entity separate from their shareholder group. In this part, the major shareholder was the Salomon, and the Salomon Pvt Ltd. was applied to separate their members and working group from the Salomon finance group. However, the Salomon Pvt Ltd. has own the case and the corporation Act did not be followed in this case, as this is a case of 1897, and the Corporations Act has come in force in 2001. Therefore, the shareholders did not get the opportunity to explore the duty and responsibility of the company. Moreover, the strong presenting point of the Salomon group had influenced the court and the judging process. In a case the Corporations Act has not applied, therefore the liability of the shareholders were not been maintained in this case<sup>13</sup>.

Every time it is not that, the directors of a company are always negligent towards the shareholders. In many cases, the shareholders also have unreasonable demands. In the Case of *Peate v Federal Commissioner of Taxation* (1966), the appellant was a doctor, Mr. Peate has a partnership in the New South Wales Cessnock. In this, the doctor has established a company called Westbank. In the future business process, the company share has been sold to others. On the next time, eventually Mr. Peate has established a family business or company, Raleigh. However, the services and related agreement between these two companies, it is discussed or decided that Dr. Peate will provide 14% of profit to each services. In this case, the appellant is the Dr. Peate, he applies to s 260, because he wants to get a tax relief to exist its business to the long run. In this context, another context can be derived, that is Penny and Hooper, and they have the same problem, and want a tax relaxation on the business purpose. However, as the case was applied, the court has focused on different sectors to judge the case, more importantly on the agreement and arrangement of the business partnership<sup>14</sup>. In this process, the court wants to identify the needs and importance of the tax relaxation for both the groups. The high court did not agree on this appeal and not allowed

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<sup>13</sup> Edward Rock, 'Adapting to the new shareholder-centric reality' (2013) 81 *University of Pennsylvania Law Review* 1907

<sup>14</sup> Robyn Moroney,, Carolyn Windsor, and Yong Ting Aw, 'Evidence of assurance enhancing the quality of voluntary environmental disclosures: an empirical analysis' (2012) 52 *Accounting & Finance* 903.

them to tax relaxation. As the court has pointed out different sides that directs there is no reason or allow them to avoid the business taxes.

The points are the Doctor has full control over his family that means, Mr. Peate is capable enough to work every day, and certainly pay all the taxes of each section. Apart from that, there is no commercial justification of any arrangements, which have shown in the agreement. Moreover, they have failed to represents any kinds of proper reasons to avoid the taxes. Last and final one is, there is no problem with the Westbank Company, but there is problem with the transaction process of the Raleigh Company. The founder of the Raleigh Company is Dr. Peate, and Mr. Peate is the appellant of the tax relaxation. The court cannot allow a company that has involved with bank transaction and clarity, with the tax relaxation. Hence, here it can be seen as per the Corporation Act that the directors of the company did not show any negligence rather it was the fault of the shareholders<sup>15</sup>.

Hence, it can be seen that the Corporation Act 2001, has the power to impose the liability on the directors of a certain company and influence them to work more effectively. As there were, the discussion in the director's responsibility part, that if duty and responsibilities are not enacted properly, then civil penalty needs to be charged against the victims. Corporation Act 2001 makes the directors of a company think in favour of the shareholders and give them their part of share. Therefore, in this process, the shareholders and directors would be able to gain more responsibility towards their company and would try to focus on the company business revenue and not only on their own. According to the Corporation Act 2001, the shareholders need to understand the real aim of the business and help the business firm when they will face financial problem in future. On the contrary, unless and until the shareholder's work in cooperation with the directors such a liability generation is not possible and no Act can achieve that properly. Forceful implementation of this Act may be regarded as a one sided favour to the shareholders<sup>16</sup>.

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<sup>15</sup> Masoud Azizkhani, Gary S. Monroe, and Greg Shailer, 'Audit partner tenure and cost of equity capital' (2012) 32 *Auditing: A Journal of Practice & Theory* 183.

<sup>16</sup> Peate v Federal Commissioner of Taxation (1966) 116 CLR 38

## **Conclusion**

The assignment has focused on a specific case topic, in which the company is not willing to take the responsibility of their shareholders and the directors. According to the Corporations Act 2001, there was appropriate definition of the role of shareholders and directors, through which they can prove their reliability towards their company. In this process, the Corporations Act 2001 has been analysed thoroughly. Most importantly emphasises on the responsibilities of directors and shareholders. Moreover, the ways they can improve their reliability to secure a position in the organisational responsibility and legal existence. In this case, few cases have been mentioned as examples to critically analyse the discussion topic. There are four different cases, which indicate to different types of irresponsibility of directors or shareholders leads the company to the court. Moreover, the Corporations Act 2001 is helpful to make the shareholders and the directors more determined to Act their responsibility properly.



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