AUSTRALIAN INSTITUTE
of COMPANY DIRECTORS

THE LANGUAGE OF DIRECTORSHIP

A GLOSSARY OF TERMS FOR DIRECTORS

The Australian Institute of Company Directors is a member institute for directors dedicated to having a positive influence on the economy and society by promoting professional directorship and good governance. Company Directors delivers director development programs, information and advocacy to enrich the capabilities of directors, influence the corporate governance environment in Australia and promote understanding of, and respect for, the role of directors. With offices in each state of Australia and more than 30,000 members, Company Directors represents a diverse range of organisations from the top ASX 200 publicly listed companies to not-for-profits, public sector entities and private companies.

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Glossary

The Language of Directorship

A

AAICD

Associate member of the Australian Institute of Company Directors. (See the Australian Institute of Company Directors website for more information about eligibility for this member type.)

ACCC

Australian Competition and Consumer Commission

accelerated depreciation

Depreciation at a higher level initially than on a straight-line basis over the accepted working life of the asset. An alternative meaning is when tax law allows depreciation to be claimed as a deduction at a faster rate than the accounting useful life.

acceptance (contract)

The acceptance of the offer which causes a contract to come into force. Acceptance must be:

- in reliance on the offer
- complete and unqualified
- clear and certain
- express or implied
- communicated.

Acceptance may be:

- retrospective
- waived, for example, when an offer is made to the public as a whole.

accounting period

The period of time ending at the financial year end which a company adopts for financial reporting purposes, usually one year.

accounting standards

Australian accounting standards are issued by the Australian Accounting Standards Board (AASB) and prescribe accounting policies and disclosures required in the financial statements and notes to the accounts. The Australian standards are the Australian equivalents of International Accounting Standards (AIFRS). The International Financial Reporting Standards (IFRS) are issued by the International Accounting Standards Board. To a limited extent the AASB has modified or added some requirements for Australian purposes.

accounts

Informal term used to describe financial statements.

accrual accounting

Accounting basis whereby revenue is recognised as earned and expenses as they occur or are incurred – not on a cash basis, where recognition occurs when cash is received and paid.

accumulated depreciation

The aggregate, at a given point of time, of the depreciation accumulated on depreciable assets up to the financial year end. Also known as provision for depreciation. The written down value of depreciable assets is the original cost less the accumulated depreciation.

acid test ratio (quick ratio)

A measure of very short-term liquidity in the event of not being able to realise the value of inventories. The formula used in Australian Institute of Company Directors' courses is: current assets less inventories divided by current liabilities less bank overdrafts.

ACNC

The Australian Charities and Not-For-Profits Commission

acquisition

The process where one company takes over the controlling interest of another company, generally through purchase. See *take over*.

(ADIs) Authorised Deposit-taking Institutions

Corporations which are authorised under the Banking Act 1959 (including banks, credit unions, building societies), regulated by APRA.

advisory board

Generally provide objective, non-binding advice on an organisation's strategic aims and direction. They have no authority to act on behalf of the company and are not recognised by the *Corporations Act 2001*. Used by organisations going through a rapid growth phase, entering new markets, creating new product ranges, staving off a serious competitive threat, for example.

agent

Legal concept different from business use, such as a real estate agent. In law, an agent is a person who, by virtue of authority conferred on him or her, is able to create or effect legal rights and duties as between another person, who is called the principal, and third parties. Agents must be distinguished from employees (servant-master relationship) and independent contractors who may often appear as agents, but legally are not. The legal distinctions regarding employees as agents of the employer (and hence company/board) are important in trade practice legislation.

(AGM) Annual General Meeting

A meeting which is a legal requirement for larger incorporated entities. Must be held within a specific time, usually within five months of the financial year end. The purpose of the

AGM is to present the financial statements, directors' declaration, directors' report, auditor's report (for public companies and large proprietary companies) and items of business as advised on the agenda. The election/removal of directors should occur according to the terms specified in the company's constitution.

agreement, arrangement or understanding

Trade practice legislation concept, referring to any agreement, arrangement or understanding which is express or implied, regardless of whether or not it is enforceable.

AIFRS

Australian International Financial Reporting Standards

alternate director

A person nominated by a director to represent him or her at board meetings. The role, duties, and responsibilities of an alternate director will usually be specified in the constitution or formal company documentation and the appointment is usually subject to the acceptance of the board. The role of alternate director is not an assignment of the director's duties and responsibilities, nor is he or she an agent of the initial director.

alternate dispute resolution (ADR)

Way of resolving disputes without resorting to litigation. Examples include mediation, early neutral evaluation, arbitration and conciliation.

ambit

An extended full scope request, usually beyond what is expected. In industrial relations referred to as 'ambit claim', which is the specification of all details and all who are to be covered.

amortise

To depreciate or allocate the cost (systematically reduce the book value of) an intangible asset over its estimated useful life. This recognises the cost of utilising the intangible asset in the business as part of the matching process. Usually applied to intangible assets such as intellectual property which have a finite life. The term depreciation usually refers to tangible assets.

annuity

Cash flow of equal amounts to some future date.

Anton Piller order

The Anton Piller order is a powerful weapon against intellectual property infringement. It is a court order which allows the applicant to enter the defendant's premises and seize evidence of infringement of intellectual property rights.

apportionment of liability

Judicial or mediation decision as to the financial contribution towards a liability, based upon an allocation of responsibility or blame.

APRA

Australian Prudential Regulation Authority

arbitrage

The trading of the same securities in different markets simultaneously to profit from the differences in interest rates, financial instruments or securities prices.

arbitration
Use of a third person/party to provide an outcome to a dispute which both parties agree will be legally binding. Can be an arbitrator or a formal arbitration body such as is found in industrial relations legislative framework.

assessable income
All income as defined by the Income *Tax Assessment Act 1997*, which is subject to taxation.

asset
Accounting definition: An asset is a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity.

asset (current)
An asset that is expected to be realised in, or is held for sale or consumption in, the entity's normal operating cycle (usually one year); or is held for trading purposes or is expected to be realised in one year of financial year end; or is cash or a cash equivalent with no restrictions on use.

asset backing
The assets (as stated in the accounts) divided by the number of shares. Can also mean the same as net asset backing which is the net assets (shareholders equity) divided by the number of shares.

asset utilisation
A ratio that measures sales generated from assets and is calculated in the Australian Institute of Company Director courses as: sales divided by assets expressed as a multiple.

ASIC
Australian Securities and Investments Commission

assignment
The legal transference of rights and/or liabilities to another.

associated company
A company not controlled by the investor but over which the investor has significant influence. Significant influence is presumed to exist with ownership of between 20% and 50% of the voting share capital, but other evidence might show otherwise.

association
A formal organisation of people joined together for a common purpose. May be incorporated or unincorporated.

ASX
Australian Securities Exchange

ASXCGC
Australian Securities Exchange Corporate Governance Council. Responsible for the development of the *Corporate Governance Principles and Recommendations* for Australian listed companies.

at call
Payable on demand.

audit
See *external audit* and *internal audit*.

audit committee

A subcommittee of the board. Its role is to monitor the effectiveness and integrity of the organisation's financial reporting. Listed companies are required to have audit committees.

auditor's report

Directors are required to ensure the auditor's report, usually in the form of a letter addressed to the board and which gives the auditor's opinion based on the audit work, is presented and attached to the financial statements. If the auditor is not satisfied with any aspect of the audit process, or disagrees on an important issue, a *qualified* opinion is given.

Australian Standards

Published by Standards Australia, these represent the 'best practice' consensus of industry experts and regulators on a given subject, for example, AS3806 Compliance Programs, AS4269 Complaints Handling.

authorised capital

Ceiling amount of equity provided for in the constitution of a company.

B

back-door listing

Where a company, A, which is already listed on the stock exchange is acquired (bought) with the intent to purchase the assets or business of a non-listed company, B, which then becomes listed in the process. This process avoids the rigour of a pre-listing market assessment via a formal prospectus and is less expensive.

bait advertising

Advertising goods at a low price or with special conditions without being able to guarantee sufficient supply.

balance sheet

Common name used for the statement showing assets, liabilities and equity at a point in time and name now used under the Australian International Financial Reporting Standards. Former name was 'statement of financial position'. There are two options for presenting the assets and liabilities by using either:

1. 'liquidity classification', similar to bank reports. Companies are given the option to use this method if is more accurately reflects their liquidity structure
2. current/non-current classification, the most commonly used.

bank bill

A bill issued by a company which is accepted or endorsed by a bank, thus carrying little risk.

BCA

Business Council of Australia

(BCP) Business Continuity Plan

A plan made in advance for dealing with expected or unexpected major incidents which may disrupt or temporarily stop a business from operating.

bear market
A 'falling' market, as opposed to a bull – 'rising' – market.

behavioural compliance
Measures such as training and incentive schemes used to encourage employees to comply with the law.

bill of exchange
An unconditional order in writing, addressed and signed by person A to person B, who must pay the capital (face value of bill) and interest at a specified time to person A.

board charter
A formal written statement of the roles and responsibilities of the board. The charter plays a major part in any performance evaluation of the board.

board committee
Technically board committees are subcommittees. The boards of larger organisations often delegate work to sub-committees to more effectively deal with complex or specialised issues and to use directors' time more efficiently. Committees make recommendations for action to the full board, who retain collective responsibility for decision making. Committees should be independent of management.

board composition
Often refers to the proportion of executive and non-executive directors on a board but also has a broader meaning. Boards ideally should be structured to ensure that their legal duties and responsibilities can be effectively met. This requires an analysis of the skills, knowledge and experience required of board members, together with effective selection techniques for new directors.

board diversity
Usually refers to the mix of genders, ethnicity, cultures and backgrounds represented on the board.

board induction
A formal process to familiarise a director new to a board with his or her roles and responsibilities, the operations and culture of the organisation and any major issues or initiatives. It aims to allow new directors to make a positive contribution right from the start of their appointment.

board papers
Information formally presented to the board, usually by management, to assist with decision-making, discussion and the setting of strategy. Typically board papers include an agenda, minutes of the previous meeting, the CEO's report and financial reports.

bona fide
In good faith; honestly without fraud, collusion or wrong doing.

bond
A longer-term security offered by government, statutory bodies and public companies that promises to pay the specified sum on a defined date with interest, which is usually paid periodically over the life of the bond.

bonus issue
The issue of extra or free shares to existing shareholders in a predetermined ratio, say, 1:4.

bonus shares

Free shares given in proportion to the shareholder's existing holding and issued from capital reserves.

book build

A process whereby the shares of a company about to be listed on the stock exchange is pre-committed to a range of stock brokers who assess its value. This process gives feedback on the market's perception of the company and engenders confidence in the market, leading to a determination of share price at issue date. It usually means that fewer shares will be available for the general public.

book value

Recorded amount of an item, mainly applied to assets and liabilities, as presented in the financial statements. The accounting standard terminology is 'carrying amount'.

borrowing costs

Replaced under the Australian International Financial Reporting Standards by the term 'finance costs'.

breach of contract

The failure to comply with one or more contractual terms by:

- failing to perform as specified or
- expressly negating the contract or some of the terms
- acting in such a way as to indicate intention not to perform.

broad risk category

A category of related specific risks, such as foreign exchange, used for reporting comparison and consolidation purposes.

brought to account

Recorded in the general ledger and, hence, the financial statements.

bull market

A 'rising' market – as opposed to a bear – 'falling' – market.

Business Judgment Rule

Also known as BJR or by the term 'safe harbour'. In Australian Institute of Company Director courses, this means any decision to take, or not to take, action in respect of a matter relevant to the business operations of the corporation. A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of sec.180(1) care and due diligence – and their equivalent duties at common law and in equity, in respect of the judgment if they:

- make the judgment in good faith for a proper purpose
- do not have a material personal interest in the subject matter of the judgment
- inform themselves about the subject matter of the judgment to the extent that they reasonably believe to be appropriate
- rationally believe that the judgment is in the best interests of the corporation.

business level strategy

Concerns how organisations establish and maintain competitive advantage.

business risks
All risks which could harm the financial performance of, or the essential services provided by, the company.

business undertaking
Any financial/business undertaking or scheme carried on by means of, or through, an unincorporated association, a joint venture, partnership or trust.

C

call option
An option that gives its holder the right but not the obligation to buy an asset at a predetermined date (maturity date) for a predetermined price (exercise price) from a nominated party. See also *put option*.

(CAMAC) **Corporations and Markets Advisory Committee**
Provides a source of independent advice to the Australian Government on issues that arise from time to time in corporations and financial markets, law and practice.

capital
Has various meanings, normally determined by the context of the usage. Meanings include:

- capital when used in context of meaning property, plant and equipment
- capital as a concept under income tax separating items from being revenue related, with capital items being normally considered under capital gains tax rather than income tax
- capital gain being the gain on sale of a non-current asset or business or legal entity that is reported in the accounts and is usually subject to capital gains tax
- share capital being contributions from owners (shareholders) to fund the company
- working capital being the current assets less current liabilities
- capital employed as in the ratio return on capital employed where capital employed means equity plus borrowings.

capital gain
Difference on disposal between the net sale price (or assessed value) and the carrying amount (book value) of a non-current asset.

capital growth
Appreciation in the capital or market value of an investment, as opposed to the income which may be received from the investment (such as dividends).

capitalisation
A valuation method which converts the net income amount to a capital value: dividing the net income by the 'cap rate' or the earning rate expressed as a percentage.

capitalisation of expenses
The accounting practice of adding an item to the cost of a non-current asset instead of being included as an expense in the calculation of profit. This occurs when companies are involved in constructing their own property, plant and equipment. For example, staff are involved in designing machinery, their labour and associated costs, based on time worked on the project, are added to the cost of that machinery. Once installed, the machinery will be depreciated, which includes depreciating the capitalised labour.

carbon reduction

Implementing a program to calculate, reduce and offset emissions, to reduce your carbon footprint.

care and due diligence

Under sec.180(1), a director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- were a director or officer of a corporation in the corporation's circumstances
- occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

case law

The body of unenacted law; the decisions given by judges over time.

cash flow statement

The third statement required in a financial report (after the balance sheet and income statement). It gives a summary of:

- cash flows from operating activities
- cash flows from investing activities
- cash flows from financing activities.

Giving net increase or decrease in cash, which, plus cash at beginning of year, gives cash at the end of the financial year.

casting vote

The deciding vote in cases where voting is tied. According to sec.248G of the *Corporations Act 2001*, the chairman may have a casting vote if necessary on a directors' resolution in addition to their vote as a director.

caveat

'Let him beware': A warning made in proper form to a court or registrar to prevent any step being taken without notice being first given to the person who ordered the caveat (the 'caveator').

caveat emptor

Latin term for the legal principle 'let the buyer beware'.

CDC

The Company Directors Course, the flagship program of the Australian Institute of Company Directors.

(CEO) chief executive officer

The CEO is the head of the executive team and manages the day to day operations of the organisation, its people and resources. The CEO implements the board's strategy and ensures that the organisation's structure and processes meet the strategic and cultural needs of the organisation. The CEO may or may not be a member of the board. This will be defined in the board charter.

certified agreement

A company-specific agreement which covers groups of employees. Unions are involved in the process and have a right to be involved at the point of certification.

chairman
This term is not defined in the *Corporations Act 2001*. A chairman is a director who has been selected by his/her fellow directors to organise and manage the business of the board, e.g. lead board meetings. The chairman acts as the link between the board, the organisation and CEO. Governance codes usually require the chairman to be independent. Other directors can remove the chairman from the chairmanship (he/she becomes an ordinary board member again) but only shareholders can remove him/her as a director.

charge
A form of security for a debt consisting of the creditor's right to receive payment in priority to other creditors from amounts owing out of a specific fund or out of the proceeds of sale of specific property.

chattels
Any property other than freehold land. Leasehold and other interests in land less than freehold are termed chattels real. Chattels personal are moveable, tangible articles of property.

chief entity
See *parent entity*, which is the term used under the Australian International Financial Reporting Standards.

Chinese wall
A strategy, usually an agreement, to isolate a person so that he or she cannot communicate information of a confidential (for example, price-sensitive) nature to other persons in his or her firm.

chose in action
An intangible right which can be enforced by action at law, such as a debt.

circulating resolutions
A resolution passed without a directors' meeting being held. Instead all directors entitled to vote on a resolution sign a document stating they are in favour of the resolution. The resolution is passed when the last director signs.

civil case
A non criminal law suit, usually involving private property rights. For example, lawsuits involving breach of contract, probate, divorce, negligence and copyright violations.

class action
Group (a group of people with similar claims) legal proceedings. See also *statutory derivative action.*

client legal privilege
Sometimes called 'legal professional privilege': that freedom which the law recognises for a client (including a corporation) to consult its legal advisers without being exposed to the risk of the communication being available as evidence in court.

code of conduct
A set of principles by which members of a particular group are expected to abide.

collective investment
Where the investment, such as a property trust, is managed on behalf of many co-investors. Also called a pooled investment, managed investment or unit trust.

committee charter
Similar to a board charter, the charter of a board subcommittee, such as the audit committee, is a formal written statement of the roles and responsibilities of the committee. The charter plays a major part in evaluating the performance of the committee.

committee of management
The terminology often used for the board or governing body of a not-for-profit, community or voluntary organisation. Committees of management are typically involved in providing leadership, planning and strategic direction to the organisation. They may or may not be involved in day-to-day operations.

common law
The body of law developed on the principles and case law precedents established by courts. Originally developed in England.

company
An entity created by law which has a separate legal existence from its members. The body may be incorporated by:

- royal charter
- special act of Parliament
- registration under the Corporations Act.

company limited by guarantee
A type of public company subject to the *Corporations Act 2001*. The liability of members is limited to an amount guaranteed in the constitution to be contributed in the event of winding up. There is no share capital. Rarely used by trading companies.

company secretary
Ensures that the company complies with regulations, and that decisions of the board of directors are implemented. Is an officer for the purposes of the *Corporations Act 2001*.

comparative advertising
Advertising that directly compares one product with another. This is legal as long as the comparisons are factual and objective and does not mislead or deceive.

competition
In trade practices law, competition refers to the process or mechanism generated by market forces, created by alternative sources of supply and by changing demands of customers. Strictly speaking, it does not include things like tax laws and other impositions which may affect your ability to trade profitably, because these affect all business in the market.

competitive advantage
Exists when an organisation has a set of value creation activities that its rivals cannot match.

compliance
The act of adhering to defined standards.

compliance program
Measures adopted by a company to ensure compliance with all rules governing its business conduct.

conciliation
A process of dispute resolution which uses the non-binding arbitration of a third party.

condition

A term of a contract which, if not complied with, by one party, entitles the other party to terminate the contract.

condition precedent

A requirement which must be fulfilled, or an event which must occur, if a contract is to come into force. Not to be confused with a condition in the sense of a fundamental term of a contract.

confidential information

Information, usually of commercial value, kept secret by its owner. Unauthorised use and disclosure by a person might be prevented where the information was entrusted to the person in circumstances purporting an obligation of confidentiality. Publication to the world destroys the confidentiality of such information.

conflict of interest

Common law principle referring to a clash of interests whereby a person has an interest, real or perceived, in both sides of an arrangement. It is an important consideration with related party transactions, cross directorships and nominee directors. Conflicts of interest should always be declared and minuted where appropriate. A director claiming a conflict of interest is advised to absent him or herself from the board meeting when relevant discussions or votes are held and ensure this action is minuted.

conformance

Another term for legal compliance, i.e. ensuring that the organisation is complying with various laws and regulations. This includes compliance with the corporations act, trade practices, environmental, WH&S, anti-discrimination and other relevant laws and requirements.

consensus ad idem

Agreement to the same thing.

consent

Legal agreement to terms and conditions.

consideration

The price, return or payment or action, performance or forbearance required to make a contract operative.

consistency

Accounting principle that requires financial statements be prepared on a consistent basis from one accounting period to the next.

consolidated accounts

Financial statements of the full set of legal entities owned by the parent entity. Reflects the aggregated financial affairs of the whole group, including the parent entity.

constitution

The term used for the document a company prepares under which to operate. A company may have a constitution, use the replaceable rules or use a combination of both (sec.134 of Corporations Act 2001). The constitution should be a director's first point of reference. Before 1 July 1998 memorandum and articles of a company were prepared. For companies that did not prepare a new constitution, the memorandum and articles still apply and are regarded as the constitution. If companies incorporated before 1/7/98 wish to change any rules, they repeal their former constitution and adopt a new constitution, post 1/7/98 form.

constructive notice
Where a person is deemed to have knowledge of particular facts or information, or should have known.

contingent liability
A potential obligation, possible liability or legal exposure that may arise (possible, but less than probable) from the occurrence of some unplanned or adverse event that has not occurred by the financial year end. Contingent liabilities are not included as a liability in the balance sheet but must be reported in the notes to the accounts.

continuous disclosure
Statutory duty to report to the stock exchange for disclosure to the market, any material matter which an investor would reasonably require to know to make an informed investment decision.

continuous improvement
An element of corporate conduct specified in the Australian Standard for compliance programs.

contract
An agreement containing promises by two or more parties, which are enforceable by law. There are six requirements that must be satisfied:

- intention to create legal relations
- agreement (result of offer and acceptance)
- consideration (something for something)
- legal capacity
- genuine consent
- the contract should be for a proper purpose.

contributory negligence
Where a person damaged by the negligence of another partly contributed to his or her own loss or damage by a failure to take care for himself or herself.

control
A concept under accounting standards which is the capacity of an entity to dominate decision-making, directly or indirectly, in relation to the financial and operating policies of another entity so as to enable that other entity to operate with it in pursuing the objectives of the controlling entity. The parent entity prepares consolidated financial statements which includes itself and all its subsidiaries.

control effectiveness
Adequacy or effectiveness of management controls in mitigating inherent, control or procedural risks.

controlled
A legal term being the capacity of the entity to benefit from the asset in the pursuit of the entity's objectives and to deny or regulate the access of others to that benefit.

convertible note
A fixed-term, fixed-interest unsecured debt instrument (loan) which offers the right to convert to ordinary equity at specified future date. If not converted at that time, it would normally be repaid by the issuing company at face value.

copyright
A form of intellectual property right. Right to control the doing of certain acts with works such as text, paintings, sound recordings and films. The rights include copying, adapting and publicly displaying those works.

corporate culture
The formal and informal structures and practices that govern 'the way we do things around here' which will impact corporate governance. Term referring to the processes and policies which govern an organisation, such as: the varied issues relating to company, board and director performance, accountability, board effectiveness and risk/return decisions.

corporate governance
Corporate governance is, "the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, are held to account." (ASXCGC *Corporate Governance Principles and Recommendations*, 2007.)

corporate level strategy
Concerns the scope of an organisation's activities. More specifically it addresses which businesses the company operates in and how it manages those businesses.

corporation
Any body corporate formed or incorporated under the *Corporations Act 2001*. Government entities that have specific enabling legislations are sometimes called corporations.

Corporations Act 2001
A Federal Act which regulates company incorporation and behaviour and financial services and products in Australia.

corrective advertising
Trade practice order to publish a retraction of stated conditions or benefits, or to publish factually correct information.

cost-volume profit
The process of assessing profit obtained across various cost and production levels.

covenant
A promise under seal. It may be positive (a promise to perform some act) or negative (restrictive; that is, a promise not to commit some act).

creative accounting
Occurs when the accounting policies adopted, or the interpretation of those polices override or circumvent the principles of accounting standards, or generally accepted accounting principles. Often this is achieved by developing a legal situation that overrides the substance of the transaction or situation. An example could be where a lease is prepared in a manner that it is determined to be, from an accounting view, an 'operating' rather than a 'finance' lease so that the lease liability and associated asset are not included on the balance sheet.

creditors
A person or organisation to whom money is owed. Creditors may be secured or unsecured, which may impact on the amount of money returned to the creditor in cases of insolvency.

criminal case
Prosecution by the State of a person or organisation, for committing a public wrong considered an offence against the State.

(CSR) Corporate Social Responsibility
An umbrella term for a company's orientation vis a vis its stakeholders. It is usually described in terms of a company considering, managing and balancing the economic, social and environmental aspects of its activities.

culture of compliance
Characteristic of organisations with a high propensity to comply with the law; under the Commonwealth Criminal Code, a culture of non-compliance may result in legal liability for the corporation.

current asset
An asset that is expected to be realised in, or is held for sale or consumption in, the entity's normal operating cycle (usually one year); or is held for trading purposes or is expected to be realized in one year of the financial year end; or is cash or a cash equivalent with no restrictions on use.

current liability
A liability that arises and is expected to be settled in the entity's normal operating cycle (usually one year); or is due to be settled within one year of the financial year end.

current ratio
Ratio of current assets divided by current liabilities. It is a measure of medium-term liquidity, that is, to pay debts as and when they fall due.

current tax asset
Current tax recoverable at the reporting date.

current tax liability
Current tax payable at the reporting date.

D

damage
Injury suffered (physical or other). A necessary element to establish the tort of negligence.

damages
Economic compensation awarded for the loss or damage suffered as a result of breach of contract or tort. See also *liquidated damages.*

days creditors
A ratio that attempts to measures the average time taken to pay creditors and is calculated in Australian Institute of Company Director courses as: trade creditors divided by cost of goods sold multiplied by 365.

days inventory
A ratio that measures the average time taken from time of purchase to sale inventory and is calculated in Australian Institute of Company Directors courses as: inventory divided by cost of goods sold multiplied by 365.

days receivable
A ratio that measures the average time taken from date of sale until collection and is calculated in Australian Institute of Company Directors courses as: trade receivables divided by sales multiplied by 365.

(DCF) discounted cash flow
A method for evaluating today's value of future amounts of cash flow.

de facto director
A person not formally appointed as a director but who acts as a director. This is based on the nature of the activities or work they perform rather than their official title, e.g. a person may call themselves a consultant but be carrying out tasks associated with or as a director. In a court, they would be considered to be a de facto director and therefore owe the duties of a director.

debenture
A secured financial instrument (loan) where the borrower has to repay the face value at the specified maturity date and, usually, interest at defined periods. The security is a legal charge over the company's assets.

debt finance
Range of debt available to a company. In the event of liquidation, debt-holders (of debt finance) rank ahead of equity holders in the distribution of assets. Secured creditors, where the finance is tied to assets, rank ahead of unsecured.

debt:equity ratio
Measure of the gearing (leverage) and in Australian Institute of Company Director courses is calculated as: total liabilities divided by equity. It indicates the level of funding from liabilities compared with equity.

debt (interest bearing):equity ratio
Measure of the gearing (leverage) and in Australian Institute of Company Director courses is calculated as: total interest-bearing liabilities divided by equity. It indicates the level of funding from borrowings compared with equity.

deed
A written instrument, signed, sealed and delivered, or deemed so by statute, to testify the parties' agreement to terms, policies, arrangements and payment.

deed of access
Provides individual directors with access to company documents and records if action is ever taken against them for events which occurred during their term of office.

deed of indemnity
A company's constitution may give a right of indemnity through a Deed of Indemnity with individual directors. However the *Corporations Act 2001* has restrictions on the extent of indemnity that a company can provide. Directors and Officers Insurance may provide coverage for these excluded areas.

deeming provisions
To count as, or to be taken as, without it ever actually or necessarily having happened.

deferred tax assets
Income tax recoverable in future reporting periods from deductible temporary differences and carried forward unused tax losses.

delegation of authority
The *Corporations Act 2001* allows the board of directors to confer on the managing director any powers which the board can exercise (sec. 198C). A delegation of authority is a formal statement of matters delegated by the board to the CEO and management team. The matters will generally be operational in nature.

depreciable amount
Carrying amount of a depreciable asset less the net amount expected to be recovered on disposal at the end of the useful life of the asset.

depreciable asset
A non-current asset that has a limited useful life.

depreciation
A systematic charge against revenue, made for the purpose of allocating the depreciable amount of a depreciable asset over its useful life. Usually applied to buildings and fixed assets. See also *diminishing value* and *straight line* for two common methods of calculating depreciation.

derivative
Financial instrument whose value depends on the values of one or more other underlying assets or indexes of asset values. The assets and indexes involved are generally interest rates, foreign currencies, commodities or equities and the term is typically used to encompass forward contracts, futures, swaps, options and hybrid products. The derivative products may require delivery of the underlying asset or may require a cash adjustment.

derivative action
Legal practice that enables shareholders or others (such as creditors) to take action against the board and/or specific directors in the name of the company, using company funds.

derived immunity
Where answers or information given in the process of an investigation cannot be used against anyone, including the person giving the answers or information. See also *privilege*, and recent cases which have challenged derived immunity, for example, EPA v. Caltex 1994.

diminishing value method (of depreciation)
Calculating depreciation of a non-current asset by multiplying the opening written down value (which is its cost in the first year) by the depreciation rate. The calculated amount is expensed each year. The depreciation rate used is usually 1.5 times the straight line rate that would be used over the effective (useful) life. Sometimes twice the straight line rate is used.

Directors and Officers (D&O) insurance
D&O Insurance is designed to allow directors and officers to carry out their role with reduced risk of personal financial hardship if things go wrong. Generally D&O Insurance

provides cover for the acts of any past, present or future executive director, non-executive director, company secretary, executive officer, employee who is involved in the management of the organisation, but only for claims made against them, or circumstances reported to their insurer, during the period of insurance.

directors' declaration

Corporations Law sections 295-297 requires a directors' declaration affirming, in their opinion (which applies to the company and any consolidated accounts) whether:

- financial statements comply with applicable accounting standards (sec.296) (small Pty Ltds may be exempt)
- financial statements provide a true and fair view (sec.297). In giving this opinion, directors must consider post balance-date events. This opinion covers the company's and any consolidated accounts.

Additionally the directors assert the company (but not any subsidiaries) can pay its debts as and when they fall due (sec.295). The directors' declaration must be put as a resolution of the board and the declaration signed by two directors for a public company or one director for a proprietary company on behalf of all directors.

directors' fees

Amounts paid to an individual in return for providing directorship services to an organisation. Shareholders approve a maximum combined pool of fees for the board; the board decides how to apportion this pool between themselves. Sitting on a board committee would usually involve fees in addition to the standard board fee, and this is covered by the pool. Any increases in the fee pool must be approved by shareholders.

directors' report

Included in the annual report, prepared with reference to sections 298 – 300A of the *Corporations Act 2001* and includes at least:

- names of directors
- review and results of operations
- any significant change in operations
- dividends recommended
- dividends paid during the year
- events after the financial year end.

If the company is a public company, the directors' report also details:

- directors' qualifications, experience and special responsibilities
- number of board and committee meetings
- number of meetings each director was eligible to attend and did attend
- if listed on the stock exchange, directors' shares and related party transactions
- if listed, policies for determining director and executive remuneration and any performance hurdles.

directors tenure

The length of time a director serves on a board. Directors are commonly elected for three year terms at a time.

disclosing entities

For statutory reporting purposes, disclosing entities are defined by reference to the types of securities they have issued. If a body has enhanced disclosure (ED) securities, then it is a disclosing entity. Disclosing entities include:

- entities listed on a stock exchange or a securities exchange
- entities raising funds pursuant to a prospectus
- entities offering their securities as consideration for the acquisition of shares in a target company under a takeover scheme
- entities whose securities are issued under a compromise or scheme of arrangement
- borrowing companies.

With the exception of listed securities and securities issues by borrowing corporations, a class of securities or a body will only be classified as ED securities if 100 or more persons have held securities in the class at all times since the issue of the securities.

discount rate

Interest rate (%) or cost of capital for a company.

discrimination

Unfair distinction on the basis of age, gender, disability, race, and so on.

dividend imputation

Tax rule whereby tax paid at the company level, attributable to dividends paid, is carried through to individual shareholders, thereby avoiding double-taxation.

dividend reinvestment plan

When shareholders are given the opportunity to elect to receive part, or all, of the amount of their dividends in the form of additional shares at approximate market value rather than cash.

double jeopardy

Principle which means a person cannot be tried twice on the same set of facts: civil/criminal, civil/civil or criminal/criminal.

downstream impacts

The result of the effect a company's policies/products/production process may have on the purchasers at the next stage of the process of consumption.

(DPS) dividend per share

Distribution to shareholders out of the net profit, retained profits or other appropriate reserve, usually expressed as 'per share'.

due diligence

Common law principle which pertains to all aspects of a director's role. Diligence is defined by the Macquarie Dictionary as the "constant and earnest effort". The issue for directors is that there is no definable level of 'diligence': the degree to which a company or directors were duly diligent is judged by an objective standard.

duress

Actual or threatened violence or imprisonment which compels a person to act contrary to his or her true wishes.

duty of care

Legal obligation by virtue of the relationship. Whether a duty of care exists is a question of law and determined on the facts of the case.

E

earnings

The American term for profit. In Australia, profit is the term generally used in financial statements and both terms are used in ratios involving profit.

EBIT

Earnings before interest and tax. It is a measure of profit before deducting interest and tax. EBIT is not necessarily shown in the income statement. Profit before tax is shown and EBIT can be calculated by adding back borrowing costs. Another consideration in determining EBIT is whether or not to include or exclude material items. These notes exclude material, which requires EBIT to be adjusted for them.

EBITDA

Earnings before interest, tax, depreciation and amortisation. A simplistic surrogate for cash flow from operations, but other items also affect operating cash flow.

EBIT margin

A ratio that measures sales profitability and is calculated in the Australian Institute of Company Director courses as: EBIT divided by sales expressed as a percentage.

ecologically sustainable

Development which can be sustained without negative effect on the environment. This concept is relevant to directors under environment law.

economic entity

Replaced by term 'group' under the Australian International Financial Reporting Standards.

(EGM) **extraordinary general meeting**

A general meeting of members, usually not in the board's calendar that is not the legally-required *annual general meeting* (AGM).

embedding

The integration of compliance measures with normal business practices.

employee share ownership plan

A company offers its employees the opportunity to buy shares in the company, often through remuneration sacrifice. The aim is to encourage greater staff engagement and productivity, resulting in improved company performance and shareholder returns.

(EMS) **environmental management system**

The organisational structure, responsibilities, practices, procedures, processes and resources for implementing environmental management. An EMS constitutes the mechanisms through which control over environmental impacts of a company is exercised.

enacted law

Law made by Parliament, referred to as statute law or legislation. See also *statute law.*

enforceable undertaking

Promise to a regulator, offered in settlement of an alleged breach or as a condition of the regulator's approval/clearance, to do or not do certain things. These promises are made enforceable by the regulator's governing legislation.

enterprise

Business activity or organisation.

environmental audit
Structured review and instigation of required procedures with reference to environment issues and compliance.

environmental baseline review
An assessment of existing environmental management practices and procedures against a standard guideline. Recommendations for future action may arise to meet the guideline's intent.

(EPS) earnings per share
Ratio of 'earnings' (net operating profit after tax) divided by the number of shares on issue which is a measure of a company's performance expressed as cents per share. An accounting standard and equity analyst practice uses more complex versions of this formula.

equities
Shares which represent part ownership of a company and giving voting rights. Usually used in reference to investments in shares of other entities.

equity (accounting)
Equity is defined as the residual interest in the assets of the entity after deducting all its liabilities. Equity represents the owners' interest in a company and consists of contributed equity and reserves. Equity equals net assets, being assets less liabilities. Three components of shareholders equity are:

- share capital
- reserves
- retained profits (or accumulated losses).

For consolidated entities where some subsidiaries are held by minority equity holders, those parts of those subsidiaries' equity belong to them. This results in additional components in equity before giving the total equity:

- a sub-total of equity attributable to the members of the parent entity
- minority interests.

equity (law)
Separate but complementary law to common law. Equitable remedies, such as injunctions, are commonly sought in commercial cases.

equity accounting
Where companies can include their proportional share of associates' after-tax profits in their income statement, movements in reserves in their equity and net assets in the balance sheet. Equity accounting must be applied when there is significant influence.

equity finance
Funding by providing more shares or different types of owners' rights (equity) rather than debt finance. The range of equity instruments include:

- ordinary, preference, redeemable preference, reset preference
- shares
- bonus and rights issues, company options and convertible notes
- trust units, listed and unlisted, mainly equity and property trusts
- exchange traded options
- financial futures.

(ESGR) environmental social governance reporting
Factors that drive long term company performance. Examples range from human capital management to carbon emissions, stakeholder relations to board independence.

ESOP
Employee Share Ownership Plan whereby employees may gain tax-advantaged shares as part of remuneration.

estoppel
A legal bar to alleging or denying a fact because of one's own previous actions or words indicating the contrary. *Estopped:* bar; to impede by estoppel. See also *promissory estoppel.*

exclusion clauses
Terms in a contract which exclude or avoid a liability outcome for a breach of the contract.

exclusionary provisions
A type of boycott whereby two or more competitors agree that they will not deal with a third party, thereby affecting availability of goods or services to, or from, others.

exclusive dealing
Market conduct where one business imposes restrictions on the freedom of clients to trade with other businesses.

executive director
A director who is employed, usually full time, by the company. Terms of employment set out in service agreement rather than a letter of appointment.

executive equity plan
An element of executive remuneration. Companies use equity incentive and ownership plans to encourage superior performance by their senior executives and to assist in their retention.

exercise price
Defined price of a financial instrument at some stage in the future, also called strike price.

expenses
Accounting definition: decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrences of liabilities that result in decreases in equity, other than those relating to distributions to equity participants.

express condition
A requirement specifically defined in the contract.

express consent
Written or specifically defined agreement.

external audit
Independent review performed by ASIC-registered auditors external to the company, of whether the financial statements of an organisation are a true and fair representation of the organisation's financial affairs.

extraordinary item
Use of term not permitted as a description of income or expense items under the Australian International Financial Reporting Standards. Previously meant, items of revenue or expense that arose from transactions or other events that were clearly distinct from ordinary activities of the entity and were not of a recurring nature. They were rare and are shown separately on the income statement.

F

FAICD

Fellow of the Australian Institute of Company Directors. (See the Australian Institute of Company Directors website for more information about eligibility for this member type.)

FAICDLife

Lifetime fellow of the Australian Institute of Company Directors. (See the Australian Institute of Company Directors website for more information about eligibility for this member type.)

fair value

The amount for which an asset could be exchanged between a knowledgeable willing buyer and a knowledgeable willing seller in an arm's length transaction.

fiduciary duty

Common law obligation to a relationship of good faith, trust and loyalty because of the nature of the legal/implied relationship. Equity law imposes fiduciary duties on a director or officer, including acting in good faith and avoiding conflict of interest.

(FIFO) first-in, first-out

A method that determines the cost of each item of inventory by assuming the first items purchased or produced are the first items sold. Thus inventory on hand is valued based on the cost of the most recently acquired inventory.

finance costs

Interest and other costs incurred in connection with the borrowing of funds. Such costs include interest on bank overdraft and short and long-term loans, amortisation of borrowing facility costs, exchange differences on foreign currency borrowings (net of the effects of related hedges) and interest portion of finance leases.

financial instruments

Specific financial products.

financial performance

The outcomes of a company in financial terms, such as profit, share price, dividend and earnings per share.

financial statements

Term used to describe the set consisting of:

- balance sheet
- income statement
- cash flow statement
- statement of changes in equity and notes.

(Also known informally as *accounts*.)

financially literate

Able to read and analyse financial statements.

financing activities
Shown on the cash flow statement and are cash transactions which relate to changing the size and composition of the financial structure of the entity, being cash received from increasing equity and borrowings and cash paid from reducing equity and borrowings and paying dividend.

fixed asset
The British term for an asset, normally of a physical form, which is not expected to be converted into cash in the next twelve months in the normal course of the company's business. 'Property, plant and equipment' is the term used under Australian and international accounting standards.

fixed costs
Costs which remain constant no matter what the volume of production or activity.

fixing, controlling, or maintaining, prices
Practice of having agreements, for prices of goods and services, with other competitors or businesses involved with your own business. Trade practice (competition law) concept and a practice which is a per se offence giving strict liability (immediate penalty).

float
To join (list on) the stock exchange after raising funds from the public.

forecasts
Forecasts of earnings, usually published quarterly.

forfeiture
A provision in a contract or lease allowing one party to deprive another of its interest or property in certain events as a penalty. Equity courts sometimes allow relief from forfeiture.

Foss v. Harbottle
Important 1843 case which ruled only the company, and not the shareholders, could take legal action against its directors. There are common law exceptions (refer to *Duties and Responsibilities of Directors and Officers* 20th Edition by Professor Robert Baxt AO FAICDLife, published by the Australian Institute of Company Directors). Shareholders have a right to take action against directors by statutory *derivative action*, with the cost of the action paid from company funds.

franked dividends
Dividends which have income tax credits attached. That is, the company has already paid tax on the profits from which the dividend is paid and the shareholder receives a corresponding tax credit. See also *imputation, dividend imputation.*

fraud (versus dishonesty)
Common law concept usually defined as an action with purpose for personal gain whereas dishonesty may occur with the best interests of the entity in mind, but not legally be the correct course of action.

fraud on the minority
Not fraud in the criminal sense, but an abuse of power by the majority shareholders forcing the minority shareholders into a position where they can be unfairly disadvantaged.

frustration

A situation in which circumstances have arisen which do not permit the fulfilment of the contract. The general requirements for the doctrine of frustration to exist are:

- an intervening event has occurred which was not expected, or caused, by either party
- there is a significant change to the original intentions following the intervening event
- given the new circumstance, the outcome is not desired by either party so there is no purpose in holding them to the contract.

futures contract

A defined contract to buy or sell, at a specified time and price, a specified amount of a specified commodity or financial instrument.

G

GAICD

Graduate member of the Australian Institute of Company Directors. An individual who has graduated from the Company Directors Course (CDC) by successfully completing the assessment tasks, who met the member application requirements set by the Australian Institute of Company Directors, and is a financial member. (See the Australian Institute of Company Directors website for more information about eligibility for this member type.)

gearing

Term referring to financing arrangements, particularly reliance on liabilities compared with equity in funding assets. There are various versions of gearing ratios. See *debt to equity* and *interest bearing debt to equity.*

general disclosure obligations

In contrast to specific disclosure, the general disclosure obligations mean that all information is included which investors and their professional advisers would reasonably require (and reasonably expect to find in a prospectus) for making an informed decision. Mooted to be changed to mean anything that would materially affect the market price.

general meeting of members

General meetings include any meetings of members (usually shareholders) such as annual and extraordinary general meetings, meetings of different classes of members and creditors meetings.

going concern

Accounting convention which requires financial statements to be prepared, in the absence of evidence to the contrary, on the assumption that the company is expected to continue in operation without any intention or necessity to liquidate or to significantly curtail the scale of its operations.

good faith

Equity principle referring to an act or course of action done with valid reasons and expectations at that point in time. *The Corporations Act 2001*, Section 181: "A director or other officer of a corporation must exercise their power and discharge their duties in good faith in the best interests of the corporation and for a proper purpose".

goodwill
An intangible asset which is not specific or identifiable, arising from the excess of the amount paid over the aggregate fair value of all the identifiable assets and liabilities acquired.

governance
See *corporate governance*.

governing director
In private companies, the constitution may be written so as to vest wide powers at one person's discretion. That person need not be a majority shareholder but the voting rights of other shares have been assigned to him or her.

greenmail
Term used to describe opportunistic investors who acquire a blocking stake in a company under takeover offer with the aim of forcing the bidder to acquire those shares at an above-market price.

gross profit
Gross profit is sales less cost of goods sold and is a common measure used within profit making enterprises, particularly those selling inventory. This measure is not necessarily shown on the income statement but can be calculated due to requirements to disclose sales of goods and cost of goods sold.

gross profit ratio
Measure of profitability and is calculated as gross profit divided by sales expressed as a percentage. This ratio is commonly used within organisations especially those dealing in inventory. The ratio is calculated at least for product lines and worthwhile calculating per product.

group
Group of entities comprising the parent entity and each of its subsidiaries. The consolidated financial statements consist of the parent entity plus all subsidiaries.

guarantee
A promise to stand in the shoes of another party, because of default or miscarriage, in order to make good the other party's repayment obligations.

guarantor
A person who gives a guarantee. See also *surety*.

H

hedging
A technique for risk management of foreign exchange exposure, interest rates or shares, designed to offset the effects of price/rate movements.

historical cost convention
An accounting convention which measures and recognises assets at the amount of their original cost (less accumulated depreciation, if applicable).

holding company
A corporation which owns or controls other companies called subsidiaries which are separate legal entities.

honesty
Fiduciary duty to act in the interests of the entity, without conflict of interest, improper purpose, personal gain, and so on. (Compare to *fraud*, where the distinction is usually personal gain.)
hurdle rate
Rate of return on investments which a company considers or specifies as the minimum rate acceptable.
hybrids
Financial instruments which have features of equity and debt finance, such as preference shares.

I

ibid (ibidem)
In the same place.
'if not, why not'
A condition of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* where companies subject to the principles are required to either comply with them or explain why the company has chosen not to follow these principles. Known in the UK as 'comply or explain'.
(IFRS) **International Financial Reporting Standards**
International Financial Reporting Standards are prepared by the International Accounting Standards.
impairment
All non-current assets are subject to an 'impairment' test to determine whether the asset's recoverable amount is less than its carrying amount or book value. Recoverable amount is determined by two tests: value in use where future cash flows generated by the asset are discounted back to present value, or fair value where there is a comparable market value.
implied consent
Consent inherent by virtue of an action or response in accordance with the contractual terms.
implied negative
Where the contract is not agreed; indicated by an action or response contrary to the contractual terms.
implied term
A term of a contract which was part of the contract without the parties expressly mentioning it.
improper use of information
Fiduciary duty referring to a director's (or management's) use of company information for personal gain or to the company's detriment.
imputation
Taxation treatment of company dividends (also known as 'franking') whereby the tax already paid on the profits of the company is 'attached' to any dividend paid and is available to offset the personal tax liability of the shareholder; dividends may be partly franked, or fully franked. See also *franked dividends*.

income
Term used under the Australian International Financial Reporting Standards instead of revenue and consists of revenue and gains. Definition: increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases in liabilities that result in increases in equity, other than those relating to contributions from equity participants.

incorporated association
In an incorporated association, the association has its own identity and therefore has rights and responsibilities separate from those of its directors and members. It can own property, make contracts, have debt, sue and be sued. There is Associations Incorporation legislation in each Australian state.

incorporation
Legal process by which a company is established.

indemnity
Where one party agrees to cover the loss of, or protect the rights of, another.

independent valuation
A valuation made by an expert in relation to valuations of that type of asset or liability and whose financial or other interest could not reasonably be considered as affecting the expert's ability to provide an unbiased valuation.

in dicta (obiter dicta)
Observations or statements by a judge that are not essential to the ruling of the case and are not binding in later cases.

inertia selling
Trade practice concept referring to the illegal practice of sending products to customers without their request and relying on the confusion caused to solicit payment.

information-gathering powers
Legislative powers given to many government agencies to enable them to force companies and/or organisations to supply information relevant to the performance of the agencies' statutory functions. These powers usually allow the agencies to enter and search premises, to require the production of information or documents, and to obtain relevant information by way of oral examination.

infringement
Breach of a statutory right granted by intellectual property legislation.

infringement notice
A notice and fine issued by the Australian Securities and Investments Commission (ASIC) in relation to a breach of continuous disclosure provisions of the *Corporations Act 2001*.

inherent risk
Probability of loss or losses within each process. Inherent risk is measured before the effect of any management control processes is taken into account.

injunction
Court ruling stopping a conduct or attempted conduct.

inside directors
A term used primarily in the US to denote executive directors, or those who come from inside the organisation.

insider trading
Involves the use of information about a company which is not available to the general public, and commonly involves the subsequent trading in the shares on the basis of that information.

insolvency
Situation in which a company cannot pay its debts as and when they fall due and payable.

insolvent trading
Illegally continuing to trade after the organisation's directors become aware of the insolvent situation. Insolvent trading exposes directors to civil and possibly criminal penalties as well as being personally liable to compensate for losses.

institutional investors
Large organisations such as (banks, finance companies, insurance companies, mutual funds, pension funds) which have considerable cash reserves which need to be invested.

intangible asset
An asset without physical or monetary form, for example: licence, trademark, masthead, patents, intellectual property, including goodwill.

intellectual property
Statutory rights, and other forms of protection (such as common law, equitable rights and contract law) relating to subject matter including copyright, patents, designs, and trademarks, and confidential information.

intention (contract)
The intention to negotiate (or the obligation to negotiate in good faith) versus the action of formalising the contract.

inter alia
Among other things.

interest-bearing debt: equity ratio
Measure of the gearing (leverage) and in Australian Institute of Company Director courses is calculated as: total interest-bearing liabilities divided by equity. It indicates the level of funding from borrowings compared with equity.

interest cover
Measure of profit available to meet the cost of borrowings and in this course is calculated as EBIT divided by interest expense (finance cost).

interlocutory order
A court order which requires something to be done or refrained from being done, pending a final outcome. For example, a company may be ordered to withdraw an advertisement, pending a full investigation.

internal audit or internal audit activity
Evaluates and monitors the adequacy and effectiveness of an organisation's internal control systems, playing a vital role in managing risks. As the independence of these auditors is paramount, they usually report to the audit committee directly.

internal controls
Relates to systems or methods put in place to monitor or safeguard the integrity of the organisation's financial matters and financial systems to prevent fraud or errors.

International member
An overseas member of the Australian Institute of Company Directors. (See the Australian Institute of Company Directors website for more information about eligibility for this member type.)

interpretation law
Guidelines on how to interpret a statute.

interpretations of accounting standards
The International Accounting Standards Board has established a committee that issues interpretations of aspects of accounting standards. The Australian Accounting Standards Board approves these interpretations, which means that the interpretations are then applied as applicable in preparing Australian financial statements.

in the course of employment
Concept in employment law which has broad application. For example, if an employee performed some aspect of his or her role in a manner which was unauthorised or contrary to that specified, an employer can still be found liable for injury. The legal issue is usually the degree to which the action is within, or beyond, defined conduct.

Intra vires
Within the legal scope of.

investing activities
Shown on the cash flow statement and are cash transactions which relate to the acquisition and disposal of companies and businesses and non-current assets, including property, plant and equipment and other productive assets; and investments, such as securities, not falling within the definition of cash.

invitation to treat
Conduct indicating that people are invited to make an offer on certain terms – for example, a price tag is not an offer itself but rather an invitation to the shopper to make an offer to buy at the indicated price.

(IPO) initial public offering
Initial offer of shares when becoming a public company (and usually listing on the stock exchange).

(IRR) internal rate of return
That rate of interest which, when applied to a stream of cash flows, reduces the net present value (NPV) to zero.

issued capital
Amount of company capital issued to shareholders, being the number of shares on issue at the (various) prices on which the shares were issued.

issued shares
Opening balance, plus share issues, less share buy-backs, equals closing balance. (In relation to Statement of Changes in Equity).

J

joint and several (liability)
A liability which accrues to all persons, collectively (joint) or individually (several).

K

Key Performance Indicator (KPI)
Measures that indicate the nature and extent of organisational performance.

L

lag indicators
Measures of an organisation's recent but past performance such as the income statement, balance sheet and cash flow statements.

law
Rules of conduct governing society which can take the form of statute law or common law.

lead director
Mainly used in the US but is also used in a small number of Australian companies, usually where there is an executive chairman. Their role includes presiding over meetings of independent directors, assisting in the preparation of the board agenda, acting as the contact point for other directors to raise concerns about the management, liaise between the board and management and lead the evaluation of the CEO and management.

lead indicators
Measures that indicate likely future performance.

leaseback
Method of financing where the vendor sells an item of property, plant and equipment and then takes out a lease, in order to remain the user of the item after the transaction.

lease financing
A method of financing where the lessor purchases the item and, for negotiated terms, makes it available to the lessee. There are tax and capital expenditure advantages. Accounting considers the underlining substance of the transaction, classifying the leases as either finance or operating. Finance means the asset is being purchased over time using leasing as the financing method, whereas operating is a right to use the asset for a period.

legal professional privilege
Sometimes referred to as *client legal privilege*. Protects the confidentiality of communications between a solicitor and their client. This allows a client to make full disclosure for the purpose of obtaining legal advice, knowing that this information cannot be used against them in court.

legislation
Acts passed by Parliament and regulations made by members of the executive acting under authority delegated by Parliament.

letter of appointment
A letter to a new non-executive director outlining the director's roles and responsibilities, participation in board committees, remuneration, the board's expectations of them, terms and conditions of employment, policies regarding conflicts of interest, access to independent advice, performance evaluation, insurance arrangements and other details.

leverage
Applied to gearing or debt to equity ratios. Also refers to the use of assets as security for borrowing.

leveraged buy-out
The use of borrowed funds to purchase a company where the equity value or potential cash flow is expected to provided the required return.

liabilities
Accounting definition: a present obligation of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits.

licence
Permission to do something which would otherwise be unlawful. In general, a licence gives no ownership rights, it cannot be assigned and is always revocable by the licensor. If granted by contract, those properties can be modified.

lien
A right to hold, or take an interest in, another's property as security for their performance of an obligation.

limited liability
Company law principle where the liability of shareholders is limited to the issue price of the shares being the amount contributed and (if any) still to be contributed by that member.

liquid assets
Assets, such as cash, and other forms, such as short-term deposits or securities, which can be quickly converted to cash.

liquidated damages
Calculated or ascertained monetary loss claimed in an action. Also, an appropriated sum or rate stated in a contract to apply in the event of a breach.

liquidation
The process of winding up a company and selling assets to repay debts. Any remaining money would be returned to shareholders.

liquidity
The ability of an investment to be easily converted into cash with little or no loss of capital and minimum delay.

list
Process of joining and being listed on the stock exchange by raising funds from the public.

listed company
A body corporate that is included in an official list of a securities exchange in Australia or overseas.

listing rules
Rules of the Australian Securities Exchange (ASX) governing admission to the official list, disclosure and some aspects of a listed entity's conduct. Compliance with the Listing Rules is mandatory for a listed company. Other countries have similar rules.

litigation funding
Company agrees to pay plaintiff costs in return for a share of the proceeds if the case is successful.

long-tail liabilities
Liabilities that arise many years after the events or transactions that give rise to them.

loss of profits
The loss of the opportunity to derive profit or a financial advantage.

M

MAICD
Member of the Australian Institute of Company Directors. (See the Australian Institute of Company Directors website for more information about eligibility for this member type.)

management controls
Checks and balances, methods and measurements adopted within a company to:

- safeguard assets
- safeguard its financial performance
- check the accuracy and reliability of data
- promote operational efficiency.

margin lending
Borrowing to invest. Investments can include savings and borrowed funds – this increases the potential returns compared to investing savings alone.

market
A place or mechanism for the exchange of goods or services, for example, the stock market. Particularly relevant in trade practice legislation for the determination of degree of market power.

market raid
When a company which seeks to expand its investment in or take over another, buys up a large number of shares of the target company.

material
Accounting definition: omissions or misstatements of items are 'material' if they could, individually or collectively, influence the economic decisions of users taken on the basis of the financial report. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor.

material items
Material items of income and expense must be disclosed in the income statement. This term replaces 'significant items'.

materiality
Accounting principle – definition: information is material if its non-disclosure could influence the economic decisions of users taken on the basis of the financial report. As a rule of thumb, if an amount is greater than 5% – 10% of the total under consideration, it could be considered material; the nature of the item or omission may also cause it to be material.

mediation
Consensual solution arrived at by the parties themselves with the assistance of a professional facilitator who is independent.

members
Under the *Corporations Act 2001*, any person owning shares in a company. More commonly known as shareholders in public companies.

memorandum
The old company's charter which sets out the objects of the company for which the company is incorporated. The articles of association then specified the rules by which the company would operate and the limitation of its powers. From 1 July 1998, incorporated companies could elect to use the constitution and/or *replaceable rules*.

merger
In trade practices law, where a company acquires the shares or business assets of another so that they cease to compete.

minutes
A record of a meeting showing its time and place, matters covered, resolutions passed and further actions required. Minutes are a legal requirement of the *Corporations Act 2001*.

misfeasance
Intended misconduct, often involving misuse of a statutory power or office.

misleading or deceptive conduct
Conduct (including silence or incomplete statement) which leads an average member of the class of persons at whom it is directed into error. See also *misrepresentation.* Prohibited by sec. 18 of the *Competition and Consumer Act 2010*.

misrepresentation
Conduct or a statement conveying a false or wrong impression, whether done in innocence or with negligence or intent to defraud.

misuse of market power
Use of market power (defined in terms of size, nature of the market and so on) to the advantage or disadvantage of a competitor, or to prevent a competitor's entry to the market.

mitigate
To reduce (minimise) the effect of. Typically applying to losses covered by insurance or to reduce the potential impact of a risk.

monopoly
Market in which there is only one supplier.

monopsony
Market in which there is only one buyer.

N

natural monopoly
Market in which, because of the scale of operations, it is efficient to have no more than one supplier.

(NED) non-executive director
A director who is not employed by the company.

negligence
A legal wrongdoing (tort) actionable by a party suffering loss or damages as a consequence of the breach of a duty of care owed by the person/company.

negligent misstatement
Failure of Person A's duty of care to Person B in the accuracy of advice or information provided by A whether written, printed or spoken. The special skill of Person A is considered to be fundamental to the duty of care.

net asset backing
Net assets divided by the number of shares on issue.

net assets value
Total assets less total liabilities. Net tangible asset value (NTA) is net assets less intangible assets.

net market value
The amount which could be expected to be received from the disposal of an asset in an active and liquid market after deducting expected disposal costs.

net profit
In the income statement is the profit after tax. In analysis, there can be other meanings. Specifically, decisions are made on whether or not material items are excluded.

net realisable value
The estimated proceeds of the sale of inventory less all further costs from the stage of completion less costs to be incurred upon sale. The inventory accounting standard requires this value to be used when it is lower than cost.

(NFP) not-for-profit
A generic name for organisations which is not established to make a profit but usually to effect a common good for the community. They are unable to make distributions of money to members. They can be public companies limited by guarantee under the *Corporations Act 2001*, or incorporated or unincorporated associations. Their primary purpose is set out in the organisation's constitution.

(NL) no liability
A public company engaged in mining or mineral exploration in which shareholders are not liable to pay calls for payment of unpaid amounts on shares issued at certain prices but not fully contributed to.

no disadvantage
Industrial relations concept meaning a changed employer/employee circumstance should not make the employee worse off in any respect.

nominal value
Superseded concept where shares had a specified or par value. Shares are now issued at any price.

nominations committee
A board subcommittee dealing with succession planning, defining needs (skills, knowledge and experience) with regard to the selection and appointment of board members and the CEO.

nominee director
A director who is appointed by an owner or interest group. The law requires that such a director must act in the interests of the company of which he/she is a director, not in the interests of the company which nominated him/her.

non-binding vote
Amendments to the *Corporations Act 2001* in June 2004 which introduced, amongst other things, expanded director and executive remuneration disclosure requirements and a requirement for listed companies to submit a 'Remuneration Report' (relating to remuneration paid to directors and executives) to shareholders for an advisory, non-binding vote. This vote concerns whether shareholders are satisfied with remuneration in the company.

non-current
Term applied to assets and liabilities. Non-current assets are usually those not expected to be or not able to be converted to cash within the current operating cycle (usually one year). Non-current liabilities are those not due to be settled within the current operating cycle.

non-delegable duty
Duty of a director which cannot be expected to be delegated to another, and/or is not legally able to be delegated.

novation
A three-party agreement where a contract between two parties (A and B) is rescinded and a new contract on the same terms is made between one of them and a third party (A and C).

(NPV) net present value
The amount arrived at by an investment analysis method which calculates today's value of a stream of net cash flows discounted (by the company's discount-hurdle-rate) over the period of the investment.

O

objective standard of duty of care
Where the desired conduct is stated, such as in statutory duties.

(OECD) Organisation for Economic and Community Development
A forum where the governments of 30 market democracies work together to address the economic, social and governance challenges of globalisation as well as to make the most of its opportunities.

offer
A communication of contractual terms by a party which, if accepted, will create a binding contract.

officer (legal)
Person who holds a defined role in the company and therefore incurs the common law fiduciary duties by virtue of that role and statute duties where specified. The company secretary is an example.

oligopoly
Market in which there is only a small number of buyers or sellers.

on-market offer
Takeover offer where the company offer is open to the general public who are investors, typically through the stock market.

operating activities
Shown on the cash flow statement and are cash transactions which relate to the provision of goods and services and consist of receipts from customers, payments to suppliers and employees, investment income received, and interest and tax paid.

operating cycle
The average time between the acquisition of materials entering into a process and realisation as cash or a financial instrument readily convertible into cash.

operating profit
Term no longer used and replaced by profit before tax and net profit.

operational risk management
Systematic process by which management gains an assurance that the opportunity for, and impact of, operational risks are minimised through the application of effective management controls.

operational risks
The broad range of possible events that can go wrong in performing operational business processes. Operational risks do not include any inherent financial or balance sheet risks.

oppression
Not defined in the law, but can be said to arise when the majority shareholders act unfairly towards the minority shareholders or where the directors act in their own interests rather than those of the company and in a way which could be described as unfairly prejudicial or unfairly discriminatory. The claim of oppression is not usually available to an individual shareholder.

option
A right to accept an offer to purchase shares, or other property, at a specified time at the specified (exercise) price. Options that are not taken up expire at that date. Exchange traded options are other forms of securities which are traded on the options market.

ordinary activities
Was previously used as a concept to group income and expenses and show extraordinary items separately. Extraordinary items concept not used under the Australian International Financial Reporting Standards, as such, ordinary activities are not important in presenting the income statement.

ordinary resolution
Resolution (formal adoption of a motion) in the normal course of a meeting by a majority of the voting shares voted in person and proxy. Also see *special resolution.*

ordinary shares

Securities being shares which give normal ownership (voting) rights in a company, have a greater risk but usually gain a higher combined dividend and capital appreciation. In the event of liquidation, ordinary shareholders rank behind all creditors and other forms of equity. *Preference shares* are usually limited to a fixed dividend and have limited voting rights. *Redeemable preference shares* can be or are to be redeemed at a specified date. *Reset preference shares* are variations on these requirements and will be specified in the issue information.

(OTC) over the counter

OTC financial market products are those which are not traded on an authorised exchange (such as the Sydney Futures Exchange or ASX), but by private agreements between the parties.

outside directors

A term used primarily in the US to denote non-executive directors or those directors who have been selected from outside the organisation.

overall impression

Trade practice concept which refers to the impression of the total conduct, not just what is printed or represented. Particularly relevant to advertising.

P

paid-up capital

The actual value received (in cash or kind) for all shares issued by a company since its incorporation.

parent entity

Any entity that controls over 50% of another entity's voting rights during all or part of the financial year, or controls over 50% of another entity's voting rights at the financial year end. Also known as parent company.

pari passu

Simultaneously and equally.

passing off

Right of action created by equity to allow the prevention of misrepresentations as to the source of goods and services, for example to prevent another trader passing off their goods as yours.

PAT

Profit after tax. Also known as NOPAT, which is net operating profit after tax.

patent

A form of intellectual property right. A grant of rights created by statute, and obtained following application and examination, to exclusively control the exploitation of an invention.

payback period

The period of time derived from an investment method which determines the time taken to recoup the initial investment. The payback period can be measured using the nominal or discounted future cash flow projections.

PBT
Profit before tax.

performance
The doing of that which is required by a contract or condition.

per se
In itself; taken alone.

placement of shares
An issue of shares in a company to particular persons or entities by the company or a stockbroker – typically at a price just below the current market price. It is not a public offer.

plaintiff
The party who brings a civil action.

planning
Usually refers to corporate planning, where the goals and objectives of the organisation are determined for a specific time period, and /or business planning (usually the detailed plans for a division, line or product/service).

poison pill
An anti-takeover device, usually by rules in the constitution or contracts, in place to make a takeover of less value – typically by triggering large payouts or renunciation of contracts.

poll
A method of voting. With polls, votes are cast in writing in proportion to the number of shares held by a member. Members who are absent during the meeting may sometimes appoint a proxy.

potential loss
The potential value of a single or series of losses arising from a risk-causing event.

precautionary principle
A statement of caution which has now been incorporated into most international treaties with environment implications. A decision of the Land and Environment Court in 1994 gave a practical guideline: A statement of commonsense directed toward the prevention of serious or irreversible harm to the environment in situations of scientific uncertainty.

precedent
The judgments of a previous case used to dictate the result in later cases.

predatory pricing
Market conduct that involves the use of pricing strategies by a market participant with a substantial degree of market power, typically selling below cost, in order to deter entry or force a competitor out of the market.

pre-emptive right
A first right of refusal. Sometimes included in the constitution of a proprietary limited company requiring a shareholder who is considering selling his or her shares to offer them to other shareholders first.

preference shares
Premium equities which, in the event of liquidation, are paid before ordinary shares, but after creditors. Usually have a fixed dividend rate and carry limited voting rights.

prenuptial agreement
An agreement that a director might be asked to sign before joining a board in which they will resign if the collective will of the board decrees that he or she must go. The Australian Institute of Company Directors does not support pre-nuptial agreements.

prescribed conduct
Trade practice principle which involves the defined conduct of eliminating or substantially damaging a competitor.

prescribed interest
A security, which can be one of many forms other than shares, debentures and other excluded interests. For prospectus provisions, the right to participate or to have any interest in financial returns.

price discrimination
Conduct in which goods and/or services are provided at different price levels to different buyers. It is not necessarily anti-competitive.

price/earnings ratio
The ratio of the price of each share divided by the earnings per share. Also see *earnings per share.*

prima facie
On the surface, at first appearance – a rebuttable presumption.

principal
A person who authorises another (an agent) to act on his or her behalf.

principles-based regulation
The form of regulation in Australia and the UK which focuses on principles or outcomes, rather than prescriptive rules or 'black letter' law.

private equity
Money invested in organisations which are not listed on any stock exchange. Investors wishing to sell their stake in an organization must find buyers. Investors generally make money when the organisation lists, is sold or merges with another organisation, or is recapitalised.

private placement
Where shares or securities are placed with an individual or syndicated investors or leading institutions through a broker or intermediary. Also see *placement of shares.*

privilege
The legal right not to disclose information. For example, the right not to disclose information on the grounds that it may incriminate (privilege against self-incrimination) or disclose confidential communications between a client and their lawyer (client legal privilege). Note the cases, for example, *EPA v. Caltex* (1994), which have determined that a company has no privilege against self-incrimination, which effectively means that the employees do not either.

privity of contract
The rule that those who are not party to a contract cannot enforce or sue on the contract.

pro bono
Legal term indicating services free of charge.

procedural compliance
The process of instituting systems that reduce the risk of breaching the law.

product exclusivity
Market conduct in which the buyer, due to the terms, condition or market power of another business, has limited or no purchase choice.

product liability
Range of liabilities which derive from goods, services or information provided by the company.

productivity improvement
Producing more or better goods or services with the same or less resources; or producing the same goods or services with less resources.

profit and loss
Old name for the income statement which reflects the financial results (profit or loss) over the defined period. Old profit and loss statement ceased to be used in June 2001. It provided less information. Remains a name in common usage, including 'P&L' as an abbreviation.

profit warning
A warning issued by a listed company to investors through a stock exchange that the profit of the company will not meet expectations.

promissory estoppel
Involves a party to a contract giving a promise or undertaking to the other party even where no contract is made. If that other party does some act to their detriment relying upon this non-contractual undertaking, he or she will be able to rely upon the undertaking, even if no consideration has been given for it. That is, the party giving the new promise is estopped from denying its validity.

promissory note
Financial instrument issued by the borrower, without the signing or acceptance of terms, at a discount to its face value and is transferable.

proper purpose
Common law principle referring to a director's duty to act and use information gained from association with the company for that company's benefit only.

property
Anything capable of being owned, tangible objects or intangible rights, such as intellectual property.

proprietary
Something, generally intellectual property, created by or for a specific organisation, so unique to them.

proprietary company
The legal term for a private, as opposed to public, company. The *Corporations Law Simplification Act 1995* allowed companies incorporated after 1 December 1995 to be categorised as small, requiring a minimum of one director and one shareholder, or large. Companies incorporated previously were termed exempt (with at least two directors) or

non-exempt proprietary. Proprietary company rules limits its members to not more than fifty and does not allow raising funds from the public. Features of the proprietary regime are:

- The basis upon which status will be determined depends on a company's consolidated gross operating revenue for the year ($10m), assets ($5m gross) and number of full-time equivalent employees (50) as at the year-end. To be defined as 'large', the company must be in excess of two of the three criteria.
- Small proprietary companies do not have to:
  - hold annual general meetings
  - prepare annual financial statements, unless requested to do so by 5% of the members within twelve months of the financial year-end, or by ASIC.
- Small proprietary companies have a minimum of one director and one shareholder.
- Large proprietary companies, public and small proprietary companies which have been requested to do so, will have to have their accounts audited.
- Large proprietary companies have to prepare and lodge their accounts with the ASIC within 4 months of their financial year-end.

prospectus
Document containing the information required by the *Corporations Act 2001* to enable investors to make a reasonable investment decision. The document invites interest in, or an offer to buy shares or raise debt. It must specify whether the company is intending to list or not.

proxy
Voting right recorded in the correct manner or correctly given to person B to use on person A's behest.

proxy advisers
Proxy advisory firms advise institutional shareholders how to vote their shares on particular resolutions put forward by a company.

prudential regulation
The regulation of the financial services industry – banks, credit unions, building societies, insurers, friendly societies and superannuation funds.

public company
A company other than a proprietary company. Companies where ownership is open to the public, but may or may not be listed on the stock exchange.

public interest test
Formal assessment of the impact of the legislation on the general public. Individuals can claim an injunction against an action where the statute allows specified 'special interest' or 'person aggrieved' appeals and the outcome of the action would affect more than one person and/ or a public right is affected.

public officer
The *Income Tax Assessment Act 1997* requires that companies have a public officer responsible for ensuring that taxation legislation is complied with. The public officer is subject to the same penalties for failure to comply. The public officer must be a person over 18 years of age, ordinarily resident in Australia, and capable of understanding the nature of

their appointment. For incorporated associations, the public officer is the official contact point for the association and their address may be used for the receipt of documentation.

puffery
Promotional descriptions or statements that inflate the benefits of a good or service in a way that is obvious and thus unlikely to mislead.

put option
An option giving its purchaser the right, without the obligation, to sell an asset at a specified price (the exercise price) to a nominated party at any time between the purchase of the option and its expiry date. Also see *call option*.

Q

qualified accounts
Where the auditors have recorded a qualified or adverse opinion about some aspect of the accounts (financial statements).

quasi
'As if it were', for example, quasi-judicial and quasi-contract.

quiet enjoyment
The (limited) right of a tenant to occupy the premises without unreasonable disturbance by the landlord or the landlord's agents.

quorum
The number of persons legally required (eligible) to constitute a meeting.

R

rack rate
The *going market rate*, usually meaning the best or highest rent or nominated room rate reasonably obtained in the market.

rate of return
A level of profit expressed as a percentage of the nominated base, such as sales, assets, equity. The term may be used to mean the hurdle rate, discount rate, IRR, when using cash flow valuation.

ratification
The later formal approval of an informal, usually invalid or unapproved act.

ratio decidendi
Principal reason for a legal decision – the legal rule embodied in a case, which is binding in later cases.

ratios
Performance figures derived by comparing one item with another, such as debt to equity.

reasonable
Under the statutory duty of care and due diligence, the *Corporations Act 2001*, s180(1):
A director or other officer of a corporation must exercise their powers and discharge their

duties with the degree of care and diligence that a reasonable person would exercise if they:

(a) were a director or officer of a corporation in the corporation's circumstances; and

(b) occupied the office held by, and had the same responsibilities within the corporation as, the director of officer occupied.

Essentially a higher standard expected of directors.

receivership

Legal situation when a qualified person is appointed, normally by a secured creditor, as receiver or receiver/manager and continues running the company. Full control can be given to the receiver so that directors retain little power other than their formal directors' duties and responsibilities.

recoverable amount

The recoverable amount must be assessed when indications are detected that an asset might be impaired and must be determined at least annually for goodwill and other indefinite life intangible assets. There are two recoverable amount tests: fair value net of costs to sell and value in use. The higher of the two is compared with the carrying amount and the asset is written down to the recoverable amount when it is lower than the carrying amount. Value in use is the net amount that is expected to be recovered through the cash inflows and outflows arising from the continued use of an asset (or cluster of associated assets) and its subsequent disposal calculated using a discount rate that reflects pre-tax risk. Many individual assets do not generate cash and as such are clustered into cash generating units at the smallest grouping in which they generate cash.

redeemable preference shares

Preference shares which are to be redeemed at a specified price or a specified date.

referral of powers

Under Australia's federal system of government, the states and Commonwealth have separate legal responsibilities. On occasion the states voluntarily hand over specific responsibilities to the Commonwealth, sometimes for a set period of time. This is known as a 'referral of powers'. The states, for instance, have referred their powers regarding the regulation of business to the Commonwealth, who manage it under the *Corporations Act 2001*.

referral selling

Where person B is paid a commission after person C has entered a contract with person A, having introduced persons A and C. The use of a 'spotter's fee' is legal because the payment is for an introduction; it is not contingent upon the outcome or contract.

regulatory burden

Also known as 'red tape', refers to excessive, redundant, complex legislative duties and regulations which impact on the ability to conduct a business. In some cases state and Commonwealth legislation might have similar requirements, creating a compliance burden particularly for smaller companies.

related party

A person or entity which has a close business and/or personal relationship with the nominated party. Under the law or accounting standards, each of the following is a related party of a public company:

- a director of the public company
- a director of a body corporate that is a parent entity of the public company
- one of the persons constituting an entity (other than a body corporate) that is a parent entity of the public company
- a spouse or de facto spouse of such a director or person
- a parent, son or daughter of such a director, person, spouse or de facto spouse
- an entity (other than a child entity of the public company) over which:
  - a person of the kind referred to above has control, or
  - two or more such persons together have control
- a parent entity or sibling entity of the public company.

related party transactions
Transactions undertaken by parties which are defined as related. Such transactions must be disclosed in the accounts in accordance with Corporations Law and accounting standards and the Corporations Act (Ch 2E) includes shareholder approval requirements.

remuneration committee
A board subcommittee concerned with making recommendations to the full board about CEO, executive and director remuneration. They consider the structure and nature of remuneration packages.

remuneration report
A special requirement of the Directors' Report for listed companies in annual disclosures made to shareholders, required under section 300A of the Corporations Act. It contains detailed information regarding remuneration to the top executives, policies for determining remuneration and the relationship of remuneration to company performance.

replaceable rules
The standard rules of a company which form part of the constitution. The law assumes the company has adopted the rules unless it has replaced the model rules with its own (a replaceable rule). See sec.134 of the *Corporations Act 2001*.

replacement cost
The cost at which an identical inventory, plant or property items could be purchased or manufactured having regard to the normal purchasing or production quantities and conditions.

representation
A statement that a certain fact or state of affairs is true.

repudiation
A refusal, express or implied from action, indicating an intention to be no longer bound by a contract.

resale price maintenance
The practice of a supplier of goods or services inducing, agreeing or forcing a customer not to sell the goods below a specified price. Prohibited under the *Competition and Consumer Act 2010*.

reserves
Opening balance, plus or minus movements in reserves, equals closing balance. (In relation to statement of changes in equity).

residual risk exposure
Residual risk is the likely negative impact of a specific risk after taking into account the minimising effect of management controls. It is calculated by deducting control effectiveness from the inherent risk level, then applying a confidence factor on the sum.

restitution
Making good, returning to an original state.

restraint of trade
Where Business B agrees not to (or requires of Business A not to) conduct the business within specified times, distances, places, and so on.

result (net profit/loss)
The term used for profit of a business or geographic segment under the segment accounting standard.

retail inventory method
The method of arriving at the cost of inventory by discounting the selling value by the current average mark up expressed as a percentage of the selling price.

retained earnings
Opening balance, plus net profit after tax. Less dividends paid, equals closing balance. (In relation to statement of changes in equity).

revenue
Revenue, under the Australian International Financial Reporting Standards, is part of income and arises in the ordinary activities, being items such as sales, royalties and dividends.

reverse takeover
Occurs where Company A offers shareholders of Company B sufficient scrip in Company A in exchange for their shares in Company B to effectively leave control of Company A in the hands of the shareholders of Company B.

revocation
Cancellation of an agent's authority to act or of an offer of a contract.

rights issue
Issue of equity securities to existing investors in proportion to their current holdings.

risk assessment
So that the appropriate decisions can be made to control or manage the risk, an understanding of:

- the nature of the risk
- the magnitude of risk
- the probability associated with it
- the consequences which may follow.

risk control
Actions designed to reduce the severity, frequency or unpredictability of a loss.

risk exposure
Sum of inherent risk less control effectiveness.

risk management
A structured process that effectively minimises the unintended financial, environmental and social impact of individual risks.

risk measurement
Valuation of risk exposure in terms of inherent risk, control effectiveness and residual risk.
risk treatment
Overall action of how a risk was treated or dealt with when identified. The risk treatments are identified as avoid, accept, reduce consequences or reduce likelihood.
(ROA) return on assets
A ratio that measures profitability from assets and is calculated in Australian Institute of Company Directors courses as: EBIT divided by total assets expressed as a percentage.
(ROE) return on equity
A ratio that measures profitability from equity and is calculated in Australian Institute of Company Directors courses as: net profit divided by equity expressed as a percentage.
Royal Charter
A charter given by a monarch to legitimise an incorporated body, such as a city, company, university, etc. Most Royal Charters are now granted to professional institutions and charities.
rules-based regulation
The form of regulation which follows rules prescribing how something should be done.

S

SEC
Securities and Exchange Commission (USA).
secondary boycotts
Conduct by Person A in concert with Person B which hinders Person C from carrying out their business, causing business distress to Person C.
securitisation
Financing technique being the repackaging of nominated and identifiable future cash flows as securities which are sold to investors.
security
A financial instrument which can be regulated under the fundraising provisions of the *Corporations Act 2001* (such as shares) or not regulated (such as bills of exchange). Listed securities include shares, debentures, government bonds, property trust units, equity trust units and exchange-traded options. 'Unlisted' securities include short-term deposits, cash management trusts, superannuation, insurance bonds, convertible notes, property trusts, equity trusts, mortgages, commodities and foreign investment.
separation of powers
Doctrine formulated by Montesquieu in 1748, which proposed that common law protected society from misuse of power because the power of government was divided into three separate entities:
- legislature (*writes* and *enacts* the laws)
- executive (*administers* the laws)
- judiciary (*interprets*, *applies* and *enforces* the laws).

service agreement
A contract signed by a senior company executive outlining terms and conditions of employment and remuneration.

several liability
Liability incurred by an individual, as opposed to joint (collective) liability.

severity
Estimated cost of loss to the company if the event (risk) occurs. Is usually expressed in monetary terms and is a factor of potential loss and threat frequency.

shadow director
A person whose directions or instructions the directors of a company are accustomed to act on.

share
A unit of ownership of a company which includes the right to receive dividends, voting rights and the right to a return of funds invested in the event of corporate failure or by decision.

share buy-backs
The purchase, by the company, of shares owned by a member of that company.

share register
A register of all shareholders, showing their names and addresses, and the number and class of shares held by each one.

shareholder
A legal owner of a share in a company.

shareholder activism
An alliance of shareholders to ask questions and propose resolutions at company annual general meetings. Through shareholder activity, investors demand more information from companies to gain greater transparency.

shareholder engagement
The level of participation by shareholders in a company; how a company encourages this participation, e.g. nomination of director candidates, voting in director elections, voting on the remuneration report in listed companies, the conduct of annual general meetings, the effectiveness of mechanisms for communicating with and getting feedback from companies.

shareholders' equity
The owners' interest in the company. Also see *equity (accounting)*.

shareholding qualification
A requirement of some company constitutions that directors will own a minimum number of shares in order to hold a directorship on the board.

shelf company
An incorporated company formed for no specific purpose and available for sale by a person whose business is incorporating unlisted public and/or proprietary limited companies.

short selling
When a person sells shares which he/she does not own, but intending to buy back later, in anticipation that the market will fall and a profit will be realised.

short-termism
An excessive focus by some company executives, investors and market analysts on short-term earnings at the expense of longer term objectives, strategic aims and value creation.

show of hands
Votes cast by those present at an annual general meeting of an organisation. Each attendee has one vote, regardless of the size of their shareholding. Also see *poll*.

significant influence
An accounting standard concept being the capacity of an entity to affect substantially (but not control) either, or both, of the financial and operating policies of another entity. Equity accounting must be applied when significant influence exists.

significant items
Replaced by 'material items' under the Australian International Financial Reporting Standards.

simple contract
A contract not under seal which is verbal or written (without being sealed as a deed) or partly verbal and partly written.

SOX
Sarbanes – Oxley Act 2002 *(United States)* – A USA Federal Act which increased corporate governance requirements, particularly in relation to audits, financial reports and directors' liability. Also known as SarbOx.

special business
Where the business is described as explicit and unambiguous and it is usually presented as a motion, which is expected to lead to a resolution and definite course of action.

special resolution
Resolution which must be made in accordance with the constitution and which must be approved by 75% of those entitled to vote (present or proxy). Requires 21 days notice and outcome must be lodged with the ASIC within a specified time.

specialty
A contract under seal.

specie
Common means of payments such as coins, money.

specific performance
An equitable remedy being a court order addressed to a person who has failed (or shown that he or she will fail) to perform his or her contractual obligations, ordering him or her to perform them in conformity with the contract.

specific risk
The exposure to the possibility of reputation loss, financial loss, physical damage, injury or delay resulting from an undesirable event.

stag profits
Short-term profits to an investor (a stag) who buys newly-issued shares and then sells quickly, making a profit on early trading.

stakeholders
Persons, groups and entities with a specific interest in an organisation. For a company this typically includes shareholders, suppliers, customers and employees.

standing notice
With respect to board meetings, a standing notice is notification given by a director of his or her material personal interests in a matter with which the board or organisation may have future involvement. This notice is recorded in the minutes as a permanent record of a director's interests and to remain effective must also be given to all new directors joining the board. Section 192 of the *Corporations Act 2001* covers the requirements for giving this *notice*.

statement of cash flows
Called *cash flow statement* under the Australian International Financial Reporting Standards.

statement of financial performance
Called *income statement* under the Australian International Financial Reporting Standards. Still commonly called *profit and loss* statement.

statement of financial position
Called *balance sheet* under the Australian International Financial Reporting Standards.

statute law
Law enacted by Parliament or issued in the form of regulations by someone authorised by Parliament. Sometimes it is called 'black letter law' because of the ability to give clear instructions and provide interpretation guidelines.

statute of limitations
Specified time in which legal action must be commenced, typically six years from the date of the event giving the right to take legal action.

statutory derivative action
Legislated (statutory) right for shareholders as a group to take action against the directors of a company using company funds.

straight line method (of depreciation)
Calculating depreciation or amortisation of a non-current asset by dividing the asset cost value (net of residual value) by the number of years of its effective (useful) life and that amount is expensed each year.

strategic direction
Term describing the process of defining and evaluating a plausible future for the company, rather than strategic planning, which refers to the process of determining achieve the direction – 'how to get there'.

strategy
A method for achieving an outcome. How an organisation intends to create value for its stakeholders.

strict liability
Automatic liability, whether negligent or not.

subrogation
Legal situation where Person B substitutes for Person A and assumes all rights and liabilities of Person A.

subsidiary
A company (or other distinct legal entity) which may be majority or wholly owned by another.

substantial lessening of competition
Concept in Australian competition law which forms the basis of competition law. Legal cases usually involve the definition of the market, the product, to what degree competition will be lessened, and so on.

substantial shareholder
Owns at least 5% of voting shares.

succession planning
The process of planning in advance how to replace board members and senior executives in an organisation when they leave. Succession planning enables an organisation to refresh its leaders in order to continue meeting the challenges of a constantly changing business environment. The ongoing nature of this planning means that the board has the opportunity to manage its future needs.

sugar-coated pill
Anti-takeover device in which a contentious issue is attached to an unrelated benefit. For example, encouraging shareholders to accept a change in ownership structure by linking it to a dividend.

super voting shares
The premise of corporate representation is 'one share, one vote'. Super voting shares were proposed to make shares owned by certain shareholders carry a larger representation of voting power.

surety
A person who gives a *guarantee* (also called a *guarantor*).

sustainability
Meeting the needs of current and future generations through an integration of environmental protection, social advancement, and economic prosperity.

T

Table A
The name for the model constitution or rules which companies may use instead of formulating their own. It is assumed that companies adopt Table A unless they are replaced with company-defined rules, called *replaceable rules*.

takeover
Gaining control through the purchase of shares. The Corporations Act provides that a person cannot gain 20% or more of the voting power in a listed company (or unlisted company with more than 50 members) without relying on an exception to the takeovers prohibition. One of these exceptions is launching a takeover bid. Another exemption to the takeovers prohibition is the 'creep exemption', which permits a person to go from below 20%, or from a starting point that is above 20% and below 90%, by acquiring 3% every six months.

takeovers panel
The primary forum for resolving disputes about a takeover bid until the bid period has ended. The panel is a peer review body, with part-time members drawn predominantly from Australia's takeovers and business communities. It was established under sec.171 of the Australian Securities and Investments Commission Act (the ASIC Act).

taking advantage of market power
Australian competition law concept in which a company is considered to use market power to lessen competition and gain advantage.

tax avoidance
The legal arrangement of affairs so as to minimise the effect of tax.

tax evasion
The unlawful effort to circumvent taxation law.

technical insolvency
Financial situation when, if all creditors demanded to be paid at that point in time, a company could not meet all liabilities, but could meet the debts as and when they fall due and payable.

termination payments
Payments made in addition to regular remuneration when an executive such as the CEO has their employment contract terminated.

time is of the essence
A clause in a contract which indicates to parties that any time limits stipulated must be strictly observed.

tort
A civil wrongdoing under law.

trademark
A form of intellectual property. A sign used to distinguish the goods and services of one trader from those of another. Rights can be accrued over time at common law, or achieved through formal trademark registration.

true and fair
The phrase *true and fair* has a technical accounting meaning, rather than a literal meaning. When applied to financial reports the term means true and fair from an accounting standard, but not necessarily true in fact. Also see *fair value.*

trusts
Collective investments (property trust, equity trusts, and so on); also known as:

- managed funds
- managed investments
- prescribed interests
- investment funds/trusts.

U

ultra vires
Beyond the legal scope of.

unappropriated profits
Profits earned and reported, but not yet allocated to a purpose or distributed as a dividend. Another name for the retained profits reserve.

uncertainty
The degree of confidence involved in the assessments or judgments applied to the factors involved in risk measurement.

unconscionable conduct
There is no one definition but usually means an unfair use of power or position against another person in a weaker position, often a contracting party.

underlying profit
Statutory profit figure as adjusted in order to arrive at an amount which reflects the result for ongoing business activities and is a sound basis for the estimation of future operating results of the enterprise.

underwriter
Company which guarantees to purchase a defined number of shares in the event that less finance than the designated total is raised from the public, from institutions, and so on.

undue influence
Principle which assumes that a decision or action by Person A was not made by their own free will and was unduly influenced by Person B to benefit themselves or another person. Often, Person B is in a special or superior position of power and influence over Person A.

unenforceable
That which cannot be sued upon in court, although it may still be valid at law, if completed. For example, an oral contract for the sale of land.

unfair dismissal
Provisions under employment law to gain redress for dismissal which is contrary to anti-discrimination provisions or not according to the recommended procedures under industrial relations provisions.

unit trust
Where the total capital is divided into a number of units. Also see *trusts.*

unliquidated damages
Unspecified, that is, uncalculated, damages.

upstream impacts
Impacts on other enterprises later in the production cycle which the company may have as a result of its purchases of raw materials and supplies, or goods and services.

useful life
The estimated period of time of total service (production units) over which the economic benefits in a non-current asset are expected to be used by the entity.

V

variable costs

Costs which increase or decrease with the volume of production.

venture capital

Private sector equity funds available to finance high risk undertakings by companies in new business ventures or concepts.

vicarious liability

Liability for acts committed by an employee. The terms of the employment contract, especially for contractors, are important.

void

A void act or transaction is a legal nullity and is incapable of being rendered valid by affirmation. It is not the legal act or transaction which it purports to be.

voidable

A voidable transaction may be affirmed or rejected at the option of one of the parties to it. Upon affirmation it binds all parties retrospectively from the time the transaction was entered into.

voluntary administration

Legal option (which does not infer receivership, winding up or bankruptcy) involving the request from directors to the court for an experienced administrator to take control of the company's affairs for a period of time. The administrator assumes the powers of the directors and effectively becomes a board of one. If directors suspect that the company is not able to meet its debts as and when they fall due and payable, the appropriate due diligence step is to seek the appointment of an administrator. While this is an important due diligence step, the actions of the directors leading up to the voluntary administration will be assessed to ensure that they did not allow the company to trade while insolvent.

voluntary liquidation

Where creditors appoint a liquidator to take over the running of the company, with the requirement to realise all assets and pay out creditors to the maximum extent. Also see *winding up*.

W

warranty

A warranty is a non-essential term and a secondary obligation in a contract. A party may seek damages for breach of a term but may not terminate the contract or remove the obligation to fulfil it.

weighted average cost method

A method that determines the cost of each item of inventory from the weighted average cost of similar items at the beginning of the reporting period and the cost of similar items purchased or produced during the reporting period.

whistleblower

A person, usually an employee of the company, who reports inappropriate or non-compliant conduct by the company or its staff. The report may be directed internally or externally. The *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*, also known as CLERP 9, includes a provision protecting whistleblowers who give information to ASIC.

white knight

Friendly party in a takeover, perhaps bringing the extra capital and/or management expertise needed. Can help a company withstand a hostile takeover. Beware: specific directors' duties exist under *Corporations Act 2001* for takeover situations.

(WH&S) Workplace Health and Safety

Legal and practical area concerned with the health, safety and protection of people at work, a safe and healthy working environment and identifying and managing risk in the workplace.

wholly-owned group

Where an entity is a wholly-owned subsidiary, *wholly owned group* refers to the group of entities comprising the ultimate parent entity which has an ownership interest of 100% in the entity; and the wholly-owned subsidiaries of that parent.

winding up

Legal process of bringing a company to an end: assets are realised, creditors paid out, any surplus distributed to shareholders and the company dissolved. A company may request, or a court may order, a liquidator to undertake winding up.

working capital

Accounting formula – current assets less current liabilities.

Y

yield

Rate of net return, usually expressed as a percentage, being the profit or income divided by the relevant cost or value of the asset.