

Legal Issues in Subsidiary Governance.

A director of a non-wholly owned subsidiary must act in the best interests of that entity, even where those interests conflict with those of the parent company.

It is very important in establishing subsidiary governance arrangements to ensure that these arrangements are consistent with the purpose for which the subsidiary is established.

It is significantly easier to ensure good governance and compliance if all the subsidiaries in a corporate group adopt substantially identical constitutions.

In addition to matters usually covered in company constitutions, wholly owned subsidiary constitutions should:

- authorise the directors of the subsidiary to act in the best interest of the holding company.
- authorise the directors of the subsidiary to provide confidential information to the holding company and
- permit passing of written resolutions of the directors by email and other technological means.

Directors and secretaries of subsidiaries must exercise their powers and discharge their duties with care and diligence in good faith in the best interests of the company for a proper purpose.

They must not misuse their position or information which they have a duty to prevent the subsidiary trading while insolvent and may be held personally liable for debts incurred by the subsidiary trading while insolvent.

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Deregistration of dormant subsidiaries.

Chapter 5A of the Corporations Act provides a relatively straightforward process for deregistering inactive subsidiaries. The process is available to a company where:

- a) all the members of the company agree to the deregistration; and
- b) the company is not carrying on business; and
- c) the company's assets are worth less than \$1,000; and
- d) the company has paid all fees and penalties payable under [the Corporations Act];
- e) the company has no outstanding liabilities; and
- f) the company is not a party to any legal proceedings.

If ASIC is not aware of any failure to comply with the requirements of s 601AA it must publish a notice of the proposed deregistration in the Gazette any may deregister the company two months after publication of the notice.