Week 5 — Members’ meetings and dividends: full teaching companion

Distinguish the statutory procedures, understand why they differ, and apply them in tutorial-style problems.

1. A student’s map: director meetings are not member meetings

The lecturer's Week 5 Part 2 recording begins with a deceptively simple question: *which company organ is holding the meeting?* A board meeting is a meeting of the directors, who generally manage the company's affairs. A general meeting is a meeting of the members, whose statutory and constitutional powers include particular decisions such as appointing or removing directors. Confusing them produces a wrong answer even when the case law is correct.

Use **Chapter 2G.1 (ss 248A–248G)** to locate the standard rules for directors' meetings. For **members' meetings** go to Chapter 2G.2—especially ss 249A onward for resolutions, calling, notice, attendance and voting. These are different legal routes, not interchangeable numerical labels.

> **Memory map:** *248 = board; 249 = members' meeting machinery; 250 = many voting/proxy and meeting-detail provisions.* A client who wants to remove directors is asking a members' governance question, not automatically for a board meeting.

2. How members obtain a general meeting: four distinct routes

First: ask the board. It may agree voluntarily to convene a meeting. Section 249C provides a replaceable rule concerning a director's power to call a members' meeting; the listed-company rule is separately addressed in s 249CA. Always check the constitution, the company's status and the applicable rule.

Second: require directors to act. Under Corporations Act 2001 (Cth) s 249D(1), members with at least **5% of the votes that may be cast at the general meeting** may request a meeting. A 5% holding refers to voting power, not necessarily 5% of the number of people in the membership

register. A valid request must also meet the form requirements in s 249D. Directors generally must call it within 21 days and arrange for it to occur within two months of the request.

Third: respond to directors' failure. If directors do not call the meeting within 21 days, Corporations Act 2001 (Cth) s 249E(1) gives the majority (by votes) of the members who made the s 249D request a route to convene it, subject to further requirements. Carefully explain the timing and the expense provisions; do not simply say ‘the shareholders can do anything’.

Fourth: call the meeting directly. Under Corporations Act 2001 (Cth) s 249F, members with at least 5% of the votes that may be cast at a general meeting may themselves call it; they must bear the expense of doing so. This is a separate path from s 249D, with different procedural consequences.

Examination trap — the historic 100-member rule. The lecturer warns that older notes may say that 100 members can force the directors to call a meeting. That alternative was removed from s 249D. But the 100-member route remains relevant to **proposing a resolution for an existing general meeting** under Corporations Act 2001 (Cth) s 249N(1)(b). Calling a meeting and placing business on the agenda are not the same entitlement.

Worked application: 1,000,000 votes, 40,000 voting rights

An activist group holds 40,000 of the 1,000,000 votes that could be cast. Divide 40,000 by 1,000,000 and multiply by 100: the group has **4%**. It cannot satisfy a 5% threshold for s 249D or s 249F on those figures alone. If further supporters give it 20,000 more votes, the group holds **6%**; subject to satisfying the statute's other requirements, it can consider those routes. It may alternatively examine s 249N if it wants a resolution put at the next qualifying general meeting.

3. Unanimous paper resolutions are not normal meeting votes

For a proprietary company with more than one member, Corporations Act 2001 (Cth) s 249A permits a circulating resolution without a physical meeting when the statutory signature conditions are met. It is not merely a majority written vote. A one-member company can use the signed written record procedure in Corporations Act 2001 (Cth) s 249B. The reason is practical: forcing one member to attend a ‘meeting’ with themselves would add ritual without meaningful deliberation.

4. Dividends: three questions before anybody receives money

The narrated Week 5 dividends lecture emphasises that announcing a dividend, legally creating a debt, and actually paying cash are distinct events. First determine who can authorise the dividend

under the constitution and Corporations Act 2001 (Cth) s 254U. Second apply Corporations Act 2001 (Cth) s 254T (the relevant assets/liabilities, fairness to shareholders and creditor-prejudice constraints). Third assess when a debt arises under Corporations Act 2001 (Cth) s 254V.

Under **s 254V(1)**, a decision fixing the amount or payment date does not alone create a debt: generally the debt arises on the fixed payment date and the decision may be revoked beforehand. But **s 254V(2)** supplies a different rule when the constitution provides for declaration of dividends—the debt arises when declared. For a solvency problem, *the date on which enforceable payment obligations arise* may therefore change the outcome. Section 254W also governs dividend rights; share class terms cannot be ignored.

> **Tutorial-style problem A — The directors announce a $200,000 dividend payable next month. Unexpected losses occur before payment. Must it always be paid?**

> **Issue.** Has the company's decision already become a legally enforceable debt, and would paying infringe the statutory requirements?
> **Rule.** Examine ss 254T, 254U and especially 254V(1)–(2), together with the constitution and directors' duties.
> **Application.** If the directors merely determined a dividend under the ordinary s 254U procedure and the payment date has not arrived, the decision may be revocable under s 254V(1). If the constitution provides for declaration of a dividend that has occurred, s 254V(2) may produce an immediate debt; the outcome changes. A positive bank balance alone does not demonstrate compliance with s 254T or solvency.
> **Conclusion.** Do not give a categorical yes/no until you obtain the constitution, resolution, dates, financial figures and creditor position.

> **Tutorial-style problem B — Can 75% of members sign a paper resolution under s 249A and thereby avoid holding a meeting?**

> **No, not under the ordinary statutory circulating-resolution mechanism.** Section 249A is designed for unanimous signed resolutions of eligible proprietary companies. A 75% vote might be sufficient for certain special resolutions at a properly constituted meeting, but it does not replace the separate conditions for a circulating resolution. Identify the decision type and the correct procedural route.

5. Active learning — every answer explained

FAQ: Why is the ability to call a meeting not the ability to win the vote?

Meeting rights are procedural rights; they allow a matter to be considered. The eventual resolution still needs to satisfy the separate voting rules and subject-matter requirements. The lecturer's emphasis is that a 5% group may obtain a hearing without controlling 50% or 75% of voting power.

MCQ 1 — A 6% shareholder group wants the directors to call a meeting. Which provision should its adviser consider first?

A. s 248D B. s 249D C. s 254T D. s 131

> **Answer: B.** Section 249D governs a qualifying members' request to directors to call a general meeting. Section 248D concerns directors' meetings, s 254T concerns dividends and s 131 concerns pre-registration contracts. Discuss the written request and statutory timing as well as the percentage.

MCQ 2 — Which is correct about the old 100-member route?

A. It still independently triggers s 249D B. It applies only to loans C. It remains relevant to s 249N resolutions D. It replaces the 5% voting rule everywhere

> **Answer: C.** Section 249N(1)(b) concerns proposing a resolution for a general meeting; it does not make 100 members sufficient under s 249D. Distinguishing a proposed resolution from requisitioning a meeting is the point tested.

Short answer — What facts must a solicitor request before advising on a dividend?

> Obtain the constitution; the wording and timing of the board determination or declaration; the payment date; the rights attached to each class of shares; financial statements and up-to-date values of assets and liabilities; creditor obligations; and the forecast effect of payment. Those facts identify which limbs of ss 254T–254W are engaged and whether directors risk breaching their obligations.

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Week 7 Tutorial — Promoters, secret profits and contracts before registration

Chapter 6 doctrine taught through the live tutorial timeline, fully reasoned applications and explanatory answers.

1. The opening question in the live Week 7 tutorial: *When?*

The Week 7 live tutorial applies Chapter 6, not the separate fundraising chapter. The lecturer repeatedly returned to a **timeline**. A company is a separate legal person only from registration. Therefore, before identifying duties, contractual liability or remedies, establish **the date of registration and the date of every contract, commission and relevant decision**. This simple chronology determines whether promoter law and pre-registration contract rules are relevant.

> **Issue-spotting timeline:** BEFORE registration → promoter activity, possible fiduciary duties and a pre-registration contract. AT registration → the company comes into existence. AFTER registration → ask if the company ratified a prior contract and consider the ordinary rules governing directors, contracts and outsiders.

2. Why does a secret $12,000 commission matter?

The tutorial discusses a proposed business where a person helping establish the company may receive a **$12,000 commission** from arranging business premises. A student can make the mistake of beginning with whether the lease was cheap or expensive. The immediate issue is more fundamental: did the person personally benefit from a decision in which they owed loyalty to the company being promoted? A secret financial incentive can create an incentive to choose a transaction for personal gain rather than the proposed company's interests.

Promoters may owe fiduciary duties in relation to promoting a company. Under the equitable no-conflict and no-secret-profit principles, a promoter may need to disclose a material interest and obtain appropriately informed approval. *Gluckstein v Barnes* [1900] AC 240 is a classic secret-profit authority; *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218 is important to the concept of promoter disclosure and informed corporate approval. These cases are relevant not

because their facts are identical to a modern property lease, but because they explain **why personal gain and concealed conflicts are legally significant**.

> **Tutorial-derived problem A — A person who helped set up a company receives an undisclosed $12,000 payment for procuring premises. Does the company have a claim?**

> **Issue.** Was the recipient a promoter at the relevant time, and was the payment a secret profit or a conflict involving promoter loyalty?
> **Rule.** A person who undertakes the formation of a company may be subject to equitable fiduciary obligations in the promoter role. The no-profit and no-conflict principles require attention to informed consent and full disclosure; consider *Gluckstein v Barnes* and *Erlanger*.
> **Application.** Start with dates: when was the company registered, when was the contract arranged and when did the commission arise? Determine who authorised the deal, whether the payment was disclosed to independent decision-makers, and whether meaningful informed consent occurred. An apparently advantageous lease does not necessarily erase an unauthorised secret profit. Equally, the fact of a commission alone does not prove every element of a fiduciary claim without examining the person's role and the authorisation process.
> **Conclusion/remedies.** If an undisclosed fiduciary profit is established, relief may include an account of profits and other equitable remedies depending on facts. Advise on the evidence needed rather than promising a particular remedy.

3. Pre-registration contracts: the company cannot be bound before it exists

Section Corporations Act 2001 (Cth) s 131(1) deals with a person entering or purporting to enter a contract on behalf of or for the benefit of a company before registration. A subsequently registered company, or one reasonably identifiable with it, can become bound if it ratifies within the agreed time or a reasonable time. Do not say that registration itself automatically ratifies every contract.

Under Corporations Act 2001 (Cth) s 131(2), the person may be liable in damages to the other contracting party if the company is not registered or, once registered, does not ratify the contract or enter into a substitute within the relevant time. The statutory compensation mechanism is specific; do not confuse liability under s 131 with an ordinary contract signed after incorporation. Subsections (3)–(4) also provide court powers relevant to damages and the company's involvement. Section Corporations Act 2001 (Cth) s 132 addresses release from liability and the absence of a right to indemnity, while Corporations Act 2001 (Cth) s 133 addresses the operation of this statutory Part.

> **Tutorial-derived problem B — Before Coastal Fitness is registered, a founder signs a two-year lease 'for Coastal Fitness Pty Ltd'. The company is registered later but never ratifies the lease. Who can the landlord pursue?**

> **Issue.** Whether the company became bound through timely ratification, and what liability the person signing the pre-registration contract may owe.
> **Rule.** Apply s 131(1) to registration and ratification, then s 131(2) to the signer's potential damages liability if ratification or a substitute contract does not occur in the required time. Examine the possibility of orders under s 131(3) and any signed release under s 132.
> **Application.** Prove the signature and registration dates and the parties' agreement concerning the deadline for ratification. Mere later registration is insufficient; on the stated facts, there is no ratification. Unless a different statutory or factual outcome applies, the person who purported to contract for the unborn company may be liable to the landlord in the statutory measure of damages.
> **Conclusion.** The landlord should examine the s 131 claim against the signatory, while counsel must still inspect the exact documents, registration identity and any substitute contract or release.

4. After registration: do not confuse corporate capacity and an individual's authority

A registered company has statutory capacities under Corporations Act 2001 (Cth) s 124; but whether a human being can bind it is a separate question. Look at the person's actual authority, apparent authority, contracting method, and the statutory assumptions in Corporations Act 2001 (Cth) s 128–129, while considering Corporations Act 2001 (Cth) s 130. For execution of documents, see Corporations Act 2001 (Cth) s 127; a company may be bound in other legally recognised ways, and the absence of one signature pattern does not itself resolve every authority question.

5. Active learning and examiner's method

FAQ — Why is the registration date more important than the company's business name?

The name on the paper does not establish that a legal person existed when the document was signed. The law asks whether there was a registered company to contract, and, if not, whether the s 131 later-ratification mechanism applies.

MCQ 1 — A company is registered but does not ratify an earlier contract. Which statement is generally most accurate?

A. Registration alone binds the company B. Section 131 may impose liability on the person who purported to contract C. The landlord automatically has no remedy D. Section 181 governs all pre-registration contracts

> **Answer: B.** Section 131 requires analysis of the later registration, ratification and time limit; the signatory may become liable under s 131(2). The other answers skip essential statutory steps.

MCQ 2 — A promoter secretly receives a payment even though the proposed company obtains a competitive price. Is the competitive price necessarily a complete defence?

A. Yes B. No; the undisclosed benefit and informed consent must still be analysed C. Only if the commission was under $20,000 D. Only public companies can claim

> **Answer: B.** Fiduciary law examines loyalties, conflicts and unauthorised benefits, not just whether the company suffered a readily measurable price disadvantage.

Short answer — Create a five-step client interview checklist

> (1) Obtain the actual registration certificate and date; (2) date all negotiations, contract signatures and payments; (3) identify precisely who acted as promoter, director or agent at each stage; (4) obtain the constitution, disclosures, meeting minutes and purported ratification documents; (5) separate remedies arising under equitable promoter law, s 131 and ordinary post-registration authority rules. This sequencing converts a confusing factual narrative into legally distinct questions.

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Week 8 — Directors' duties and proper purpose: full teaching companion

Understand how an honest director can misuse a corporate power and how to reason through the authorities.

1. The central distinction: good faith and proper purpose are different tests

The Week 8 supplemental recording explains why a director who *truly believes* they are helping the company can still breach the law. The relevant statutory duties are found in Corporations Act 2001 (Cth) s 181(1)(a)—exercise powers and discharge duties in good faith in the best interests of the corporation—and Corporations Act 2001 (Cth) s 181(1)(b)—exercise powers for a proper purpose. The first asks fundamentally about company interests and the director's state of mind, assessed in its legal context; the second asks whether a particular corporate power was exercised for the reason for which that power was conferred.

> **Plain-English distinction:** 'I believed this was good for the company' is not the same thing as 'I used this power for a legally permitted purpose'. An honest belief may be relevant evidence, but it does not automatically justify manipulating a shareholder vote or entrenching a board.

2. Why company directors are able to issue shares

A company may issue shares to raise capital, as part of a commercial transaction or as genuine consideration—for example, in an acquisition or compensation arrangement. Issuing shares alters the number of voting shares and can also change who controls the company. That is why a director must examine **the substantial purpose** of an allotment. Was the real objective financing the company or strategically diluting an opposing shareholder?

In *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821, the Privy Council examined a share issue with an asserted financing explanation but a substantial purpose of altering an existing majority in a takeover contest. The decision illustrates the difference between an objectively permissible

fundraising power and using that power to manipulate control. Students should link the case to the purpose of the power, not just remember its name.

3. Whitehouse — why family conflict did not justify the allotment

Whitehouse v Carlton Hotel Pty Ltd (1987) 162 CLR 285; [1987] HCA 11 concerned a family-controlled company and a share allotment intended to affect who would control voting after the governing director's death. The High Court's reasoning emphasises that a power to allot shares cannot be used for an extraneous or improper purpose. The fact that the director considered a different future controller unfit did not of itself validate an issue designed to engineer control.

How to use it: In an exam about issuing shares to friendly supporters, state what the allotment power is for, identify the substantial purpose actually pursued, explain the evidence (timing, price, finance need, recipient selection, prior board conflict), and distinguish genuine fundraising from control manipulation. Cite both *Whitehouse* and *Howard Smith* where relevant.

4. Step-by-step legal analysis: five questions a tutor expects

1. **Power.** Identify the precise power and who held it—for example, power to allot new shares.
2. **Legitimate objects.** Explain the lawful purposes for which that power was given, without treating the list as automatically exhaustive.
3. **Actual purpose.** Examine resolutions, financial needs, board communications, who received shares and the timing of an impending vote.
4. **Substantial purpose.** Ask whether an improper purpose was substantial or causally significant, rather than accepting a director's label for the transaction at face value.
5. **Consequence and response.** State a reasoned conclusion under s 181(1)(b) and consider the separate general-law position, possible relief and procedural requirements; do not assume one automatic remedy.

> **Tutorial-style problem — While a takeover approaches, a board issues 400,000 shares to friendly investors, although there was no urgent financing plan. Directors say they sincerely believed the bidder would harm the company. Advise.**

Issue. Whether the share issue was for a proper purpose under s 181(1)(b), notwithstanding directors' professed good faith.
Rule. Directors must exercise powers for proper purposes. *Howard Smith* and *Whitehouse* show that issuing shares substantially to manipulate shareholder control is vulnerable even if directors claim that the outcome will help the company.
Application. A takeover, the selection of friendly investors and the lack of an urgent financing plan support an inference that the allotment's substantial purpose was to affect voting control. Seek board papers, capital budgets, valuation evidence, communications and the precise recipients. The directors could argue a real corporate financing need, but the court examines substance and evidence, not merely the stated label ‘raising capital’. The alternative honest-benefit argument does not dispose of the separate proper-purpose inquiry.
Conclusion. There is a serious potential breach of s 181(1)(b) and the general-law duty. Whether the allotment can be set aside, and who may obtain relief, requires the relevant claims, standing, facts and procedural route to be examined.

5. How this links Chapter 7 financing with Chapter 8 directors' duties

The Week 7 fundraising material asks *how* companies obtain money through shares and debt. The Week 8 proper-purpose material asks *why the directors chose that legal power and recipient*. A lawful mechanism can be used improperly. In tutorial answers, use one sentence to bridge the chapters: ‘Although issuing equity is ordinarily a legitimate corporate financing technique, the power must still be exercised for a proper purpose under s 181(1)(b).’

6. Active learning with complete feedback

FAQ — Is it always improper when a share issue affects voting power?

No. Share issues often incidentally alter relative voting power. The question is why the issue was undertaken and whether an improper purpose was substantial. A genuinely necessary capital raising can have incidental effects on control; the court must evaluate the evidence and applicable authorities.

MCQ 1 — Directors believe blocking a takeover benefits the company. Which statement is strongest?

A. Good intentions conclusively establish proper purpose B. The court must separately analyse the purpose of the allotment C. Directors can never issue new shares D. Section 131 resolves the issue

> **Answer: B.** The test under s 181(1)(b) is separate from merely saying a director acted honestly. Section 131 deals with pre-registration contracts, not allotment purposes.

MCQ 2 — Why is *Whitehouse* relevant to control disputes?

A. It determines all directors' remuneration B. It concerns a share allotment used to arrange future voting control C. It removes s 181 D. It concerns a dividend under s 254V

> **Answer: B.** The case illustrates a control-driven allotment and explains how misuse of an apparently broad power can be challenged.

Short answer — Name four pieces of evidence to collect in a proper-purpose problem

> Board minutes and emails; a credible documented capital budget; the timing and terms of the allotment; and the identities and existing holdings of share recipients. Those facts let a court compare the directors' asserted reason for issuing shares against the objective context and likely voting consequences.

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