

Corporations Law  
Simplification Program

Drafting issues  
**Organising the Law**

Task Force  
June 1995

# Organising the Law

We consult a piece of legislation such as the Corporations Law:

- to gain an understanding of the total system of the law and to store the knowledge we acquire for future use
- to find out how to comply with a particular obligation.

Whatever our purpose, our reading is essentially a learning activity. If we already know something, we do not pick up a publication to find out about a topic.

Learning comes more easily if the material is presented cohesively in a series of graded steps. Random and haphazard arrangement of material is a serious obstacle to learning. We have first to find the scattered pieces of information that are related and fit them together so that we can develop a complete and coherent picture of the whole. This is why organisation is a primary concern in communication. It contributes immensely to ease of comprehension and speed in understanding. Clarity of thought, sensitive consideration of audience, skilful choice of language and all the other components in the writing process can be undermined by slipshod organisation. Structure can either help or hinder users in learning about their rights and obligations.

## Added value

The grouping of related material in surrounding sections has another advantage. For example, placing all the provisions on a particular topic in nearby sections can be very useful to those who have to comply with requirements. In looking up one aspect, they can quickly scan surrounding sections to see if there are any other matters they should be taking into account.

It is disconcerting if provisions are scattered. This uncomfortable state occurs in the Corporations Law frequently as many users have complained. Perhaps the worst example is the definitions which are scattered throughout the Law: some are found at the beginning in section 9, others are found in individual chapters, parts and divisions. The result is that we can never be sure where we should start looking for a definition and never entirely confident that we have tracked down every explanation of a term. Other users have pointed to the fact that some of the provisions on registers are found in Chapter 2 (Part 2.4) while other provisions turn up at the very end of the Law in Chapter 9. Section 245 deals with the annual general meeting; so do sections 252, 316 and 332. This arrangement leads to complaints from users about not being able to find items of information or about overlooking aspects when investigating an issue.

The coherent grouping of material is critical to the effective communication of the Law.

## Whose order?

This raises the question of whose grouping we are to follow. There is not just one logic but several logics, not just one homogeneous set of users but several sets of users, all with different interests and needs. Some, for instance, simply want to get on with carrying out their

obligations and consequently would prefer a sequential, procedural approach. Others are more interested in the underlying principles or theory and lean to an arrangement by themes.

At the lower levels of structure it may be easier to arrange the material. Once we set up a chapter or part on directors, then all would agree that the discussion on qualifications should be in one group of sections and the provisions on duties in another group. But beyond these simple situations, there are no clear cut solutions. For example, in preparing to draft the law on buy-backs, it was possible to recognise at least 3 arrangements of the material. Structure 1 presented the material in the chronological order in which a person might carry out a buy-back; structure 2 organised the material around legal themes or topics; and structure 3 approached it from the point of view of the participants involved.

<b>BUY BACKS</b>			
<b>Item</b>	<b>PLAN #1</b>	<b>PLAN #2</b>	<b>PLAN #3</b>
1	Introduction	Introduction	Introduction
2	The company's power to buy back its own shares	The company's power to buy back its own shares	The company
3	The buy-back procedure	Solvency	The directors
4	Effect of external administration on existing buy-on existing buy-back agreements	Fairness between shareholders	The shareholders
5	Liability of directors on insolvency	Disclosure	
6	ASC intervention (reference to Panel)	ASC intervention (reference to Panel)	

All 3 approaches are legitimate and have merit. During testing, we discovered that most who were concerned with buy-backs preferred the chronological order because it made the task of undertaking a buy-back more routine. However, the other structures also had their supporters. In this case, the majority view was adopted in the First Corporate Law Simplification Bill on the grounds of their numbers, not because there was some superior logic or correctness in their choice.

## **The tension of size**

The great length of the Corporations Law creates its own tension for organisation. Currently the opening chapters are concerned with core company matters; that is, matters of concern to all companies. Later chapters cover less common activities such as takeovers and futures dealing. This is reasonable and certainly defensible but it raises the question of where criminal consequences should be located. Ideally, they should go next to the section which imposes them. To follow this reasoning, however, would produce a lot of repetition as the same offence applies to many breaches.

Alternatively, to avoid repetition, the consequences could be spelt out near the first section to which they apply. Then readers of later sections would be inconvenienced by having to look to the earlier section. A third solution is to collect all the consequences together in the one chapter, preferably a late one.

Because of the Law's size, no one solution is going to be ideal for all occasions. This is especially the case where we are looking up just one section, as we so often do when consulting legislation.

## **A transparent method**

Whatever solution we adopt should have a certain obviousness and method to it. The suggestion for putting criminal consequences in a late chapter, for instance, arises from the perception that most people want their companies to operate in an orderly and lawful manner and from the desire to arrange material in identifiable blocks. This gives us 2 major divisions, each with their subdivisions

- (1) if everything goes according to plan
- (2) if things go wrong (consequences).

Those consulting a section in the middle of (1) for instance know that they have to skip over the rest of (1) to find the consequences. It may not be the most immediately convenient order but at least it has a recognisable logic.

## **Where to put definitions**

There are varying practices and opinions on where to put definitions in legislation. Sometimes they occur at the beginning of an Act. On other occasions, some can be found there, while other definitions occur at the beginning of the Part or the Division which the terms are used.

Sometimes a definition will appear in the last subsection of a section in which it applies.

Some users prefer definitions near the provisions in which they are being used. This is convenient if a definition applies to only 1 provision in an Act. Its advantage disappears if it is necessary to refer to the definition in several places. Much of the treatment of definitions depends on the size of an Act, the number of definitions and the practice of users.

Users of the Corporations Law have persistently asked for the definitions to be assembled in the 1 place and, as far as possible, arranged in alphabetical order. This approach has been adopted as an element of the Simplification Program.

Once this approach has been taken, we might consider where definitions should be placed in the Corporations Law. To have them at the beginning is traditional in legal texts. Most other types of publications usually put their glossaries at the end. Having definitions at the beginning means that readers have to traverse a lot of material that has no immediate relevance before they come to substantive matters. On the other hand, some readers prefer the definitions to be placed at the front of the text.

The debate should not stop at whether the definitions should come first or last. There is another possibility: they could be published in a separate volume. They would then appear as a kind of dictionary and readers could consult this separate volume as they would a dictionary. This has the advantage of allowing readers to leave the page of the legislation open while they look up the meaning of a word. It would ease the task of reading considerably.

Such a solution would not be practical for short Acts, but it may make sense for lengthy ones like the Corporations Law, especially in the published versions that are released to the public. It is worthy of further discussion and testing.

## How many chapters?

Currently the Corporations Law is divided into 9 chapters. This means that some chapters contain a wide range of diverse material spread over many pages. In tests many users have indicated that they would prefer a larger number of smaller chapters so that they have more manageable blocks of information to deal with. In one test we experimented with expanding the original 9 chapters into 31; users suggested further divisions which has led to the 43 chapters in the proposed structure on pages 10-11.

A secondary benefit flows from having more chapters. It enables the introduction of more specific and hence more meaningful titles to chapters. This helps readers find their way around the Law.

## Table of contents

Even with a tighter drafting policy, which reduces verbiage, and with a program to eliminate unnecessary procedures, the Corporations Law will remain large. Consequently, readers require aids to help them navigate their way through it.

Especially for those who are consulting the Law for the first time, a clearly designed contents page is a vital tool. It provides a broad perspective of the subject matter. It is also valuable for both new and more experienced readers who want to have a sense of the wider context of a particular chapter or part.

Securities and Futures	29.	Takeovers and other share acquisitions
	30.	Prospectuses
	31.	Securities (participants, conduct of business, market conduct)
	32.	Futures (participants, conduct of business, market conduct)
	33.	Exchanges, clearing houses and guarantee funds
Occupational registration	34.	Auditors
	35.	Liquidators
	36.	Receivers and managers
	37.	Dealers, advisers and brokers

Because we are proposing that the material be organised in a larger number of chapters, we are also proposing the use in the table of contents of a level of headings above the chapter heading. The function of this new level would be to highlight the links between blocks of chapters. For example, the heading *Securities and Futures* covers chapters 31-35 and the heading *Occupational registration* covers chapters 36-39. In this way readers will be able to recognise the layers of structure within the material in the Law.

## Index

A contents page can only give a very broad view of the material in an Act. Moreover, it arranges its material by theme rather than in alphabetical order. Readers regularly need

sharper indications of the location of information. This function can be satisfied by a good index.

We propose that the Corporations Law should be supported by a sophisticated index. It should list not only the topics and terms used in the Law, but also include other commonly used terms and descriptions. This means that users are given all the reasonable assistance possible to find the information they are seeking.

Users who participated in our initial testing session on structure expressed a strong desire for a thorough and comprehensive index. They saw it as a critical guide both to individual sections and to interrelationships between topics and sections.

## Page headings

Headers and footers on pages are other important tools to help readers identify immediately where they are in the Law and how the particular section they are consulting fits into the hierarchy of the structure. The practice followed in the First Corporate Law Simplification Bill illustrates the value of these navigational aids:

<b>Chap: 2</b>	<b>Constitution of companies</b>
<b>Part: 2.4</b>	<b>Membership and share capital</b>
<b>Div: 4B</b>	<b>Share buy-backs</b>
<b>section</b>	<b>206F</b>

The indication of the number and title of the chapter, part and division at the top of each page gives readers vital information on the context of the section they may be considering.

The footer at the bottom of each page completes this information by providing the title of the Act and the page

## A proposed new structure

The process of simplification involves re-ordering the current Law and bringing related matters together. As a result we have had to consider what structure should be given to the Law, even though the results of our work is being released in stages. As we rework material it should be relocated to a more appropriate position.

Because the Simplification Program is being undertaken in stages, the current numbering system is being retained for the present. If the new simplified provisions were given a completely new numbering system, users of the Law would have to cope with both the old system for sections not yet simplified and the new one. It seems more convenient for users to defer consideration of renumbering until the final stage.

On pages 10-11 we set out our thinking on the structure and on the titles for the various chapters, as well as the headings for the larger levels of structure. The main features of the new structure are:

- the group of chapters dealing with remedies and enforcement

- rearrangement of the material in the core company law area (especially names)
- the group of chapters dealing with occupational registration
- a Schedule to hold transitional, savings and application provisions.

The far right hand column indicates how the existing Parts and Divisions in the Law could fit into this new structure.

We would welcome comments both on this new organisation and on the chapter titles. Our objective is to end up with a product that is congenial to the largest number of users of the Corporations Law.

We also intend to engage in further testing sessions on structure because of the critical contribution good organisation makes to the successful communication of the Law.

## Corporations Law—Proposed new structure

Chapters			
Introductory	1.	Formalities	1.1
	2.	Interpretation	1.2, 1.2A, 1.2B, 1.4
	3.	Small business guide	1.5
Setting up and running a company	4.	Registering a company	2.1, 2.2(1)
	5.	Basic features of a company	2.3(1)-(4), 3-1 4.2(1), (2)
	6.	Registers	2.5
	7.	Directors	3.2
	8.	Financial benefits to related parties	3.2A
	9.	Members' rights and remedies	2.4(1), (3), 3.4
	10.	Meetings	3.3
	11.	Shares	2.4(6), 7.13
	12.	Transactions affecting share capital	2.4(4), (4A), (4B)
	13.	Charges	3.5
	14.	Debentures	7.12(4)
	15.	Financial statements and audit	3.6, 3.7
	16.	Annual returns and lodgments with the ASC	3.8
External administration, insolvency and winding up	17.	Arrangements and reconstructions	
	18.	Receivers	5.2
	19.	Administration leading to deed of arrangement	5.3A
	20.	Winding up	5.4_5.9
Termination of company	21.	Deregistration of companies	5.6(8)
Remedies and enforcement	22.	Remedies (injunctions, compensation)	9.5
	23.	Administrative review	9.4A
	24.	Civil penalties	9.4B
	25.	General offence and penalty provisions	9.4
	26.	Court jurisdiction and powers	9.5, 9.6

\* This column indicates where Parts and Divisions in the current Law would fit into the proposed structure  
 1.1 = Part 1.1  
 2.2(1)= Division 1 of Part 2.2

## Chapters

Bodies that are not companies	27.	Foreign companies and other bodies that are not companies	2.2(3), (5), 4.1(1), (2), (3)
	28.	Collective investments	7.12(5), (5A)
Securities and Futures	29.	Takeovers and other share acquisitions	6.1-6.12
	30.	Prospectuses	7.12
	31.	Securities (participants, conduct of business, market conduct)	4.4, 7.3(2)-(5), 7.4-7.8, 7.11, 7.14
	32.	Futures (participants, conduct of business, market conduct)	8.3(2)-(5), 8.4-8.8
	33.	Exchanges, clearing houses and guarantee funds	7.1-7.2A, 7.9, 7.10, 8.2
Occupational registration	34.	Auditors	9.2
	35.	Liquidators	9.2
	36.	Receivers and managers	5.2
	37.	Dealers, advisers and brokers	7.3(1), 8.3(1)
Administration and coverage of Law	38.	Application orders	1.3
	39.	Delegation by Minister	—
	40.	ASC powers	—
	41.	Financial matters (unclaimed property, fees)	9.7, 9.10
	42.	ASC database and other documents	9.1, 9.3
	43.	National scheme provisions	2.2(4A)
Schedules	1.	Penalties	Schedule 3
	2.	Commencement, savings and transitional provisions	2.2(2), (5), 3 6(9), 4.1(4), 6.13, 9.11

Note: The proposed structure assumes that the amendments proposed by the *First Corporate Law Simplification Bill 1995* have been made.

## Publications of the Simplification Program

### *Stage 1*

December 1993	Plan of action
March 1994	Share buy-backs Proposal for simplification
March 1994	Small business Proposal to simplify proprietary companies
April 1994	Company registers Proposal for simplification
July 1994	First Corporate Law Simplification Bill — Exposure Draft
December 1994	First Corporate Law Simplification Bill (introduced into Parliament)

### *Stage 2*

May 1994	Annual returns and Financial reporting to shareholders - Proposals for simplification
August 1994	Plan of action - Stage 2
August 1994	Defunct companies — Deregistration and reinstatement Proposal for simplification
October 1994	Accounts and audit— Proposal for simplification
November 1994	Share capital rules — Proposal for simplification
November 1994	Company names — Proposal for simplification
December 1994	Forming a company — Proposal for simplification

December 1994	Company meetings— Proposal for simplification
<i>Stage 3</i> April 1995	Plan of action - Stage 3
June 1995	Organising the Law Drafting issues