

PUBLIC EXAMINATIONS

A public examination is a court-ordered inquisitorial process by which an **eligible applicant** can examine the **officers** of a corporation to provide information about the corporation's **examinable affairs**. Public examinations are covered under **Division 1 of Part 5.9 (sections 596A - 597B)** of the *Corporations Act 2001* (Cth).

WHO IS AN 'ELIGIBLE APPLICANT'?

Defined in s 9, an eligible applicant can include: ASIC, an administrator, liquidator or anyone authorised by ASIC.

WHO IS AN 'EXAMINABLE OFFICER'?

An examinable officer under s 9 includes a: director, secretary, administrator, executive officer, receiver, liquidator or trustee of the company.

DISCRETIONARY EXAMINATIONS: S596B

The court, on the application of an 'eligible applicant', may summon a person for examination about the corporation's 'examinable affairs' if the court is satisfied that the person: (a) has taken part or been concerned in the corporation's examinable affairs and has been or may have been guilty of misconduct in relation to the corporation; or (b) may be able to provide information about a corporation's examinable affairs. The court has a discretion as to whether to summon the person.

WHAT ARE 'EXAMINABLE AFFAIRS'?

Defined in s 9, examinable affairs of a corporation refer to:

- (a) its promotion, formation, management, administration or winding up; or
- (b) any other affairs of the corporation ; or
- (c) insofar as they are or appear to be relevant to (a) or (b), the business affairs of a 'connected entity' of the corporation.

MANDATORY EXAMINATIONS: S596A

Under this section the court is required to summon a person for examination about a corporation's 'examinable affairs' if an 'eligible applicant' (usually the liquidator) applies for the summons and the person to be summoned is an 'examinable officer' of the corporation.

PUBLIC V PRIVATE: S597(4)

It is a discretionary power of the court to determine whether an examination should be held in public, or in private due to 'special circumstances.'

INFORMATION BY AFFIDAVIT: S597A

An eligible applicant can obtain information by way of affidavit from an examinable officer of a corporation about the corporation's examinable affairs. This helps avoid hefty costs of an examination.