

part one

Company Formation and the Reporting Environment

1

CHAPTER

Companies and their formation

Authoritative Sources

Corporations Law, Chapter 1: Introductory
Corporations Law (as amended by the *First Corporate Law Simplification Act 1995* and if amended by the Second Corporate Law Simplification Bill 1995):

- Chapter 2A: Registering a company
- Chapter 2B: Basic elements of a company
- Chapter 2C: Registers
- Chapter 2D: Directors
- Chapter 2F: Members' rights and remedies
- Chapter 2H: Shares
- Chapter 2K: Charges
- Chapter 2L: Debentures

Key Terms

Allotment	Perpetual succession
Australian Securities Commission	Preference shares
Australian Company Number	Principal place of business
Calls	Promoters
Certificate of Registration Company	Proprietary company
Constitution of a company	Prospectus
Convertible notes	Public company
Deferred shares	Redeemable shares
Directors	Registered office
Float	Registers
Forfeiture of shares	Rights issue
Incorporation	Share buyback
Limited liability	Shareholders
Options	Shares/share issue
Ordinary shares	Subscribers
Oversubscription	Undersubscription
	Underwriting

Legal Requirements

- Companies may register as either a proprietary company or a public company and need only have one member. A public company may be limited by shares, by guarantee, or be unlimited.
[Second Corporate Law Simplification Bill (2nd CLSB), ss. 112 and 114]
- The party(ies) forming a company must lodge an application to do so with the Australian Securities Commission (ASC) and, if approved, will be issued with a Certificate of Registration and given an Australian Company Number (ACN).
[2nd CLSB s. 117]
- The company may have a constitution, either lodged with registration or adopted by special resolution at a meeting of shareholders after registration.
[2nd CLSB s. 136]
- The initial share float is to be made through a prospectus. Successful subscribers to the prospectus are allotted shares in accordance with the manner specified in the prospectus (e.g. a pro rata system may be used if the float is oversubscribed). The method of payment is also specified in the prospectus (e.g. in full on application or in instalments).
- A company may issue shares with different rights and restrictions.
[2nd CLSB s. 254A]
- Where allotment of shares was made in instalments, the directors may make calls on the shareholders some time in the future. Any failure to pay a call will result in forfeiture of those shares and of the amount paid up by the shareholder. The directors are prohibited from reissuing these shares within 12 months of the forfeiture.
- The company must set up and maintain registers at its registered office, principal place of business or at another office approved by the ASC, for its members, option holders (if any) and debenture holders (if any).
[2nd CLSB s. 216]

AMRAD raising injects new hope

By LOU CARUANA

Victorian pharmaceutical research company AMRAD Corp Ltd yesterday announced plans to raise \$70 million to meet its increased capital needs.

The company plans to use the funds to develop a number of pharmaceutical projects, including a cure for motor neurone disease, which has an estimated world market of \$US500 million (\$630 million), its managing director Mr John Grace said yesterday.

The company, which is offering 36 million 50c shares at \$1.95 per share, plans to list on the Australian Stock Exchange on December 5 with a capitalisation of \$217.5 million and 85 million shares on issue.

The underwriter to the float is Burdett Buckridge & Young.

The Victorian Government has

agreed to buy back about one-third of its 30 million shares in AMRAD at a value of \$20 million.

The Victorian Treasurer, Mr Stockdale, said yesterday the Government would keep its share in AMRAD for at least another two years.

AMRAD was formed in 1986 as an unlisted public company to develop, protect and commercialise research from leading Victorian medical and scientific research institutions.

The founding shareholders were the State of Victoria and four Victorian medical institutions.

Mr Grace said that he expected retail investors to take up 10 per cent of the float and institutions about 50 per cent. The balance would be taken up by employees, strategic investors and the Victorian Government.

AMRAD's two operating divisions—AMRAD pharmaceuticals and AMRAD Pharmacia Biotech—generated combined sales of \$87.9 million for the year ended June 30 1996. Total operating revenue for the group for the same period was \$109 million.

The company plans to focus on a validated discovery and technology program which includes a program to develop its anti-neurone disease AM 424 molecule drug to phase-two clinical trials.

Mr Grace said the market in Australia was increasingly aware of the strengths of local biomedical companies.

'CSL and Fauldings have enjoyed quite good strength in the market,' Mr Grace said.

The Australian
31 October 1996

Questions

- Distinguish between a listed public company and an unlisted public company.
- What registers will AMRAD Corporation Ltd need to maintain once it is listed on the Australian Stock Exchange (ASX)?
- Describe the steps involved, documents to be filed and certificates issued for incorporation.
- Detail the contents of the prospectus that AMRAD had registered with the ASX on 23 October 1996 (see company announcement on the next page).
- Explain the phrase 'to float a company'.
- What is the ACN number?
- Explain the differential in the two share prices: 50 cents and \$1.95.
- What does the term 'capitalisation' mean? How is the amount of \$217.5 million calculated?
- Prepare journal entries to account for the incorporation of AMRAD Corporation Ltd.
- What is meant by the Victorian government 'buying back' one-third of the 30 million shares it has held in the previously unlisted AMRAD?
- Price Waterhouse conducted a survey in 1996 of company share capital raisings and found that, on average, smaller floats (less than \$100 million) fell short of their anticipated capital level by 43 per cent. With this in mind, do the underwriters for AMRAD Corporation Ltd's float have something to be concerned about? Describe the role of the underwriter in this float.

PROSPECTUS

**AMRAD CORPORATION
LIMITED ACN 006 614 375**

AMRAD Corporation Limited (AMRAD) is offering 35,897,436 shares at \$1.95 each for subscription by the general public to raise \$70 million and has applied to be admitted to the official list of the Australian Stock Exchange Limited.

The Australian Securities Commission has registered a Prospectus dated 23 October 1996.

AMRAD is a research-based pharmaceutical company based in Melbourne which focuses on pharmaceutical research and development. The Company aims to discover and develop innovative medicines in areas of unmet medical need for commercialisation on world markets.

Copies of the Prospectus can be obtained by calling the toll free number 1800 359 444 or by contacting the Underwriter and Lead Broker:

Burdett, Buckridge & Young Limited

ACN 006 767 777

Sydney Office:

Level 17, Westpac Plaza
60 Margaret Street
Sydney NSW 2000
(02) 9226 0083

Melbourne Office:

Level 45, Rialto South Tower
525 Collins Street
Melbourne Vic 3000
(03) 9226 0261

Allotments of shares in AMRAD Corporation Limited offered under the Prospectus will only be made having received a valid Application Form which is attached to the Prospectus.

AMRAD CORPORATION



Applying the excellence of Australian biomedical research

The Australian

31 October 1996

[The above notice is of historical interest only and is not a current offer of AMRAD shares.]

\$109m AFIC rights issue to target new offerings

By MICHELLE GILCHRIST

The share market's biggest listed investor, Australian Foundation Investment Co, yesterday sought to expand share capital by more than 10 per cent and raise funds for share investment, despite recent profit downgrades.

AFIC will seek to raise \$109 million from shareholders to prepare to invest in new listings later this year, as well as existing listed companies.

The 1-for-8 renounceable rights issue announced yesterday will be underwritten by stockbroker JB Were, which established the company more than 70 years ago.

New shares will be issued at \$1.80, a 14 per cent discount to yesterday's closing price of \$2.10.

Convertible noteholders will also participate in the issue.

AFIC director Mr Terry Campbell said yesterday lower profit forecasts and a spate of new issues presented a double opportunity for share investors.

'We think that while the profit downgrades are not all over, they will trough out in the next few months,' he said.

'And the market could be under some pressure as a result of new issues, such as the Commonwealth Bank, Optus, a few property trusts and demutualisations of National Mutual and Colonial Mutual . . . so we want to have some money ready to take advantage of any opportunities that arise.'

The Australian

14 May 1996

Questions

- 12 AFIC is planning a 1-for-8 renounceable rights issue. What does this mean? Distinguish between a renounceable rights issue and a normal rights issue.
- 13 What makes a rights issue different from a share issue to the public?
- 14 What is the role of the underwriter, such as JB Were Stockbrokers, in AFIC's rights issue? What evidence is there that the market will not fully satisfy the ambitions of the directors?
- 15 Why do you think the directors of AFIC have decided to issue the new shares at a 14 per cent discount to the market's closing price?
- 16 Define a convertible note.
- 17 What is a redeemable preference share? What special characteristics do these shares usually carry?
- 18 Some companies hedge a proportion of their assets when they have redeemable preference shares on issue. Why do you think this practice occurs?

PRACTICAL PROBLEMS

1 Issue of shares payable in full on application (introductory)

H.E. Vurp Ltd was incorporated on 1 January 19X7. The directors issued a prospectus inviting subscriptions for 4 million ordinary shares of \$1 each payable in full on application. Applications were received for 4 million shares on or before the closing date, 20 January.

Required:

- Prepare journal entries and ledger accounts to record the issue using the paid-up capital method.
- Report the shareholders' equity section of the balance sheet and supporting notes.

2 Issue involving calls (intermediate)

R. Senian Ltd was incorporated on 1 January 19X7. The directors invited subscriptions for 6 million ordinary shares at 75 cents per share, payable 30 cents per share on application, 30 cents per share on allotment and a call of 15 cents when required. By the closing date, 25 January, the issue had been fully subscribed and by 1 February all money due on allotment had been received. On 15 March the directors called up the remaining 15 cents per share and the call was paid by 31 March.

Required:

- Prepare journal entries and ledger accounts to record the issue using the paid-up capital method.
- Report the shareholders' equity section of the balance sheet and supporting notes after the issue.

3 Underwriting (introductory)

The directors of HAKA Ltd, which was incorporated on 14 April 19X7, invited subscriptions for 3 million shares at 50 cents, payable in full on application. The closing date for applications was 15 June 19X7. Because economic conditions were difficult, the directors arranged for a merchant bank to underwrite the issue for a commission of 1.5 per cent.

By the closing date, applications had been received for 2.8 million shares.

Required:

Prepare journal entries and ledger accounts to record the transactions using the paid-up capital method.

4 Oversubscription (intermediate)

The directors of KIWA Ltd, which was incorporated on 1 February 19X6, invited subscriptions for 12 million ordinary shares at \$1 each, payable 50 cents on application and 50 cents on allotment. In the prospectus the directors had reserved the right to reject applications and to allot shares in proportion to the number stated in the application. Applications were received for 12.5 million shares by the closing date, 21 February, and the directors rejected applications for 100 000 shares and allotted 12 million shares on a pro rata basis. The balance of allotment money was received by 28 February.

Required:

- Prepare journal entries to record these transactions using the paid-up capital method.
- Report the shareholders' equity section of the balance sheet and supporting notes after the issue.

5 Forfeiture of shares and reissue (advanced)

The following statement was presented to a meeting of directors of SECA Ltd on 10 September 19X8.

SCA Ltd
Notes to the Accounts as at 31 August 19X8

Note 21. Share capital

Issued and paid-up capital	
5 000 000 ordinary shares issued at \$1 each, called up to 80 cents	\$4 000 000
Less: Calls in arrears	(4 000)
Share capital	3 996 000

The directors resolved to forfeit the 20 000 shares on which call no. 2 of 20 cents per share had not been paid. Some weeks later, on 2 October 19X8, these shares were reissued at 80 cents with the payment of 70 cents per share by the new shareholders.

Required:

- Prepare journal entries to record the forfeiture and reissue.
- Report the shareholders' equity section of the balance sheet.